136 U.S.
138-223

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1366.

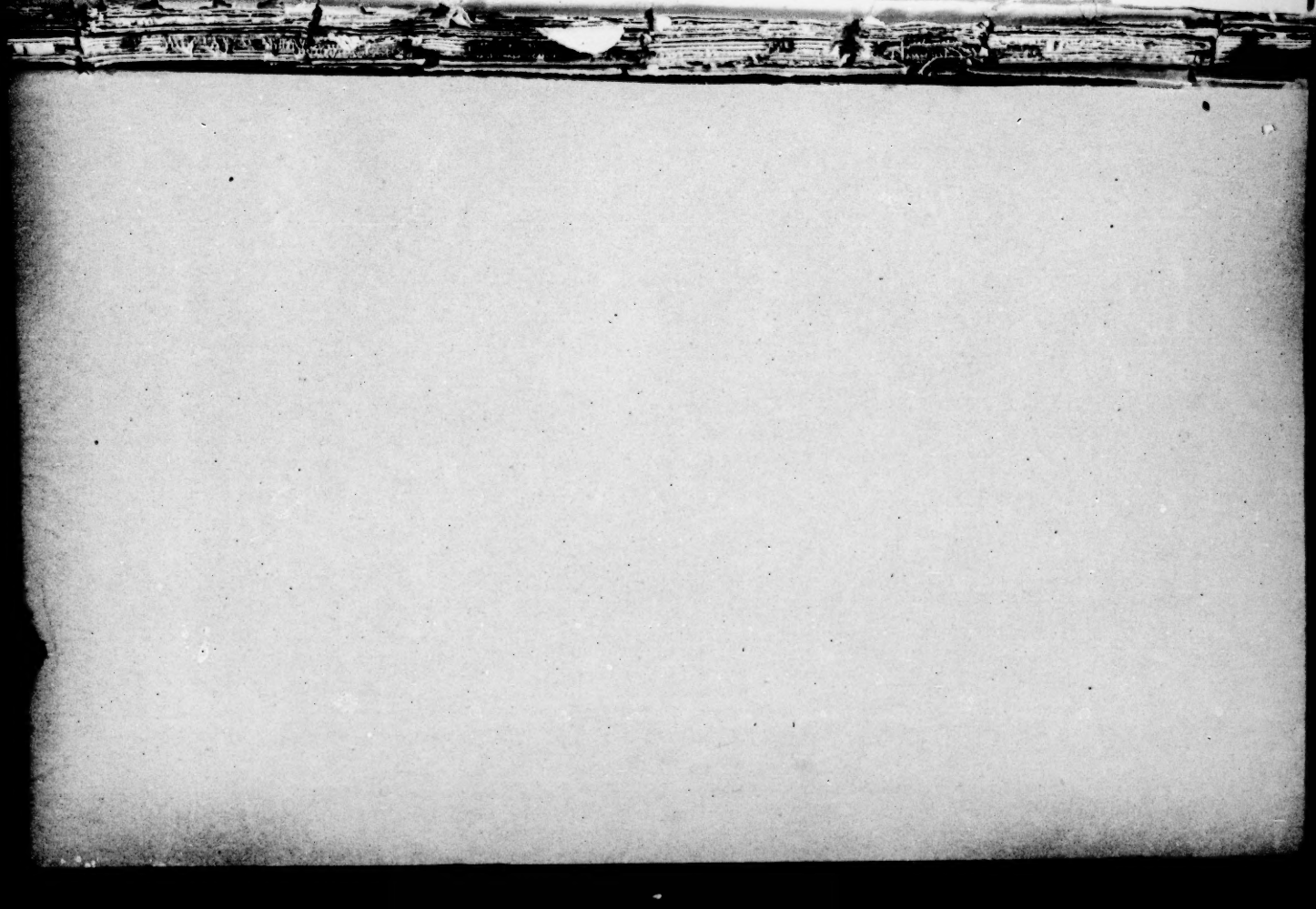
MARTHA A. MILLER, APPELLANT,

vs.

EMMA J. CLARK, MARY BELL CLARK, ALBERTUS N. CLARK, EXECUTOR OF IRENE CLARK, DECEASED, AND ELLEN C. PLATT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED OCTOBER 9, 1890.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1366.

MARTHA A. MILLER, APPELLANT,

vs.

EMMA J. CLARK, MARY BELL CLARK, ALBERTUS N. CLARK, EXECUTOR OF IRENE CLARK, DECEASED, AND ELLEN C. PLATT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

INDEX.

	Original.	Print.
Petition of appeal	1	1
Allowance of appeal	2	2
Bond on appeal	3	2
Citation	5	3
Proof of service of citation	5½	4
Stipulation as to certain exhibits on appeal	6	4
Copy of outside of pass book	6*a*	4
Copy of inside of pass book	6*a*	4
Copy of entries on signature book	6*b*	5
Assignment of errors	7	5
Bill of complaint	8	7
Subpœna	10	9
Marshal's return	11	10
Note as to appearances	11	10
Demurrer	12	11
Note of hearing on demurrer	13	11
Opinion on demurrer	14	12
Order overruling demurrer	17	13
Answer	18	14
Replication	22	16

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 3, 1890.

	Original.	Print
Complainant's proofs	23	17
Testimony of Bela Clark	23	17
Wm. R. White	28	20
Nathan P. Merwin	40	30
Exhibit First Will—Will of Irene Clark, November 17, 1879	42	30
Exhibit Inventory—Irene Clark's inventory	44	32
Connecticut Savings Bank transcripts	46	34
Defendants' proofs	50	35
Testimony of Mrs. Amanda Franklin	50	35
Mrs. Alice E. Sparks	52	40
John J. Miner	53	41
Mrs. Mary W. Cowan	56	44
Israel A. Merwin	57	44
Mrs. Georgiana Hubbell	59	46
George E. Platt	62	48
Mrs. George Platt	70	54
Mrs. Clifford Clark	72	55
Mrs. Albertus Clark	74	57
Note of hearing	75	57
Opinion	76	58
Final decree	81	61
Clerk's certificate	81	61

1 MARTHA A. MILLER
vs.
EMMA J. CLARK *et als.* } In Equity.

To the honorable the Supreme Court of the United States:

The appeal of Martha A. Miller, the above-named complainant and appellant, respectfully shows—

That on or about January 3rd, 1889, she filed her bill in the circuit court of the United States for the district of Connecticut against Emma J. Clark, Mary Bell Clark, Ellen C. Platt, and Albertus N. Clark, executor of the will of Irene Clark, deceased, showing that the appellant was a legatee under said will, and that said executor as such came into possession of three bank books issued by the Connecticut Savings Bank, each representing a deposit of $1,500 and a large sum of interest thereon accrued, one in the name of said Emma J. Clark and one in the name of said Mary Bell Clark and one in the name of said Ellen C. Platt, which books and deposits were part of the estate of said testatrix and ought to be kept, inventoried, and accounted for by him as such, but that he had wrongfully neglected to inventory the same and delivered them or was intending to deliver the same to the several parties in whose names each book was made out as aforesaid, and praying that said executor be ordered to inventory and account for said deposits, and that said other defendants turn over said books to him, and for other relief; and that afterwards said defendants jointly and severally answered to said bill, denying that said books and deposits were part of said bill, denying that said books and deposits were part of the estate of said testatrix or came into the hands of said Albertus N. Clark as her executor, or that he was as such entitled thereto, and
2 alleging that he held said books for said other defendants as their property; and that a replication was filed and proofs taken and the cause duly heard thereon and a decree thereafter passed on October 19, 1889, dismissing said bill with costs, whereby the appellant is aggrieved; and your appellant shows that the total amount of said deposits, with the interest thereon accrued prior to the decease of said testatrix and the filing of said bill, exceeded the sum and value of five thousand dollars, and that said bill, answer, and proofs show that said deposits were and are part of the estate of said Irene Clark, and that if she ever intended to give the same to said three defendants respectively in whose names she put them her intention was not legally executed or carried into effect, and that they were, at most, executory gifts of a testamentary nature and not in testamentary form.

Wherefore she appeals from the whole of said decree and prays that said bill, pleadings, proofs, and decree may be sent to the Supreme Court of the United States without delay, and that said court may hear said cause anew and review said decree and grant to your

appellant such relief as by her bill and the proofs in said cause she is entitled to and to said court may seem just.

Dated this 5th day of July, 1890.

J. W. BUCKINGHAM,
Solicitor for Martha A. Miller, Complainant & Appellant.

SIMEON E. BALDWIN, *Counsel.*

The foregoing appeal is allowed by—
N. SHIPMAN,
District Judge.

3 Supreme Court of the United States.

MARTHA A. MILLER
vs.
EMMA J. CLARK *et als.*

Know all men by these presents that we, Martha A. Miller, of the city of Des Moines, county of Polk, in the State of Iowa, as principal, and Nelson Royal and Hiram A. Miller, of the city of Des Moines, county of Polk, in the State of Iowa, as sureties, are held and firmly bound unto Emma J. Clark, Mary Bell Clark, Ellen C. Platt, and Albertus N. Clark, executor, all of the town of Milford, county of New Haven, in the State of Connecticut, in the sum of two hundred and fifty dollars, to be paid to the said Emma J. Clark, Mary Bell Clark, Ellen C. Platt, and Albertus N. Clark, executor, their respective executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 8th day of July, 1890.

Whereas the above-named Martha A. Miller hath appealed to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of Connecticut: Now, therefore, the condition of this obligation is such that if the above-named Martha A. Miller shall prosecute her said appeal to effect and answer all costs if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and virtue.

MARTHA A. MILLER. [SEAL.]
NELSON ROYAL. [SEAL.]
HIRAM A. MILLER. [SEAL.]

Sealed and delivered in presence of—
E. B. BARNUM.
W. A. HOTCHKISS.

4 STATE OF IOWA, } ss:
County of Polk, }

DES MOINES, *July 8th*, 1890.

I Nelson Royal, the above-named surety, being duly sworn, deposes and says that he resides in the town of Des Moines, in the

county of Polk and State of Iowa, and is worth the sum of not less than five hundred dollars over and above all his just debts and liabilities and exclusive of property exempt by law from levy of execution.

NELSON ROYAL.

Subscribed and sworn to, at the time and place above stated, before me—

E. B. BARNUM,
Notary Public.

[SEAL.]

STATE OF IOWA, }
County of Polk, } *ss:*

DES MOINES, *July 8th*, 1890.

I Hiram A. Miller, the above-named surety, being duly sworn, deposes and says that he resides in the town of Des Moines, in the county of Polk and State of Iowa, and is worth the sum of not less than five hundred dollars over and above all his just debts and liabilities and exclusive of property exempt by law from levy of execution.

HIRAM A. MILLER.

Subscribed and sworn to, at the time and place above stated, before me—

E. B. BARNUM,
Notary Public.

[SEAL.]

The above bond is approved by—
N. SHIPMAN,
District Judge.

5 By the Honorable Nathaniel Shipman, one of the judges of the circuit court of the United States for the district of Connecticut.

To Emma J. Clark, Mary Bell Clark, and Albertus N. Clark, executor of the will of Irene Clark, deceased, all of Orange, in the State of Connecticut, and Ellen C. Platt, of Milford, in said State:

Whereas Martha A. Miller has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Connecticut, made in favor of you, the said Emma J. Clark, Mary Bell Clark, Ellen C. Platt, and Albertus N. Clark, executor, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Hartford, in the district of Connecticut, in the second circuit, the 16th day of July, in the year of our Lord one thousand eight hundred and ninety.

N. SHIPMAN,
District Judge.

5½ [Endorsed:] No. 619. U. S. circuit court, district of Conn. Martha A. Miller *vs.* Emma J. Clark *et als.* Citation. Filed July 17, 1890. E. E. Marvin, clerk.

NEW HAVEN, *July* 17, 1890.

Due service of the within and foregoing citation is acknowledged.

W. B. STODDARD,
Solicitor for Defendants.

6 Circuit Court of the United States, District of Connecticut.

MARTHA A. MILLER
vs.
EMMA J. CLARK *et als.* } No. 619.

Stipulation as to Certain Exhibits on Appeal.

For the purposes of the complainant's appeal to the Supreme Court in said cause it is stipulated that in lieu of the three pass books in favor of Emma J. Clark, Mary Bell Clark, and Nellie C. Platt, and of the savings-bank signature book, introduced as exhibits, copies of the entries in such pass books down to May 9, 1889, and of the entries pertaining to said deposits in the signature book certified by an officer or clerk of the bank, as hereunto annexed, shall be certified up with the record; and as to the bank depositor's ledger (Printed Record, p. 31) it is agreed that all material entries therein are truly copied in said printed record.

SIMEON E. BALDWIN,
Solicitor for Complainant.
W. B. STODDARD,
Solicitor for Defendants.

6a (*Copy Outside Pass Book.*)

No. 23109.

The Connecticut Savings Bank of New Haven, Connecticut, 83 Church street, in account with Mrs. Nellie C. Platt.

(*Copy Inside Pass Book.*)

1 No. 23109. Only Mrs. Irene Clark has power to draw.

Dr. Connecticut Savings Bank of New Haven, to Mrs. Nellie C. Platt, Cr.

Milford.
48861/2.

1884.		*Dollars.*	*Cents.*
Oct. 15.	To transferred, 6 m.	1,500	00
1887.			
Jan. 15.	Interest	156	11
July 15.	Interest	101	36
		1,757	47

The books issued to Mrs. Emma J. Clark and to Mrs. Mary Bell Clark are like the books issued to Mrs. Platt, as above, except the numbers and names, which are shown on the Printed Record, p. 39.

6b *Copy by Entries on Signature Book.*

23109. Mrs. Nellie C. Platt. Milford, Conn.
Mrs. Irene Clarke (trustee). Milford, Conn.
Parents' names:
Miles B. & Sarah B. Merwin.
Date of birth:
Aug. 20th.
Mrs. C. only to draw.

23110. Mrs. Emma M. Clark. Milford, Ct.
Mrs. Irene Clark (trustee).
Parents' names:
Dennis Andrew.
Place of birth:
Orange.
Only Mrs. Irene Clark to draw.
Date of birth:
Apr. 9, 1846.

23111. Mrs. Mary Belle Clark. Milford, Ct.
(Mrs. Irene Clark, trustee.)
Parents' names:
Israel A. Merwin.
Place of birth:
Milford.
Only Mrs. Irene Clark to draw.
Date of birth:
Nov. 21, 1857.

I, William R. White, teller of the Connecticut Savings Bank, hereby certify that the foregoing are true copies of entries respectively in the signature book of said bank containing entries of accounts from No. 23000 to No. 30037, inclusive; also marked "Defendants' Exhibit Signature Book, E. E. Marvin, examiner."

WILLIAM R. WHITE, *Teller.*

[Endorsed:] Circuit Court of the U. S., district of Conn. Martha A. Miller *vs.* Emma J. Clark *et als.* No. 619. Stipulation as to certain exhibits on appeal, with copies annexed. Copy.

7 MARTHA A. MILLER *vs.* EMMA J. CLARK *et als.* } Plaintiff's Appeal to the Supreme Court of the United States, October Term, 1890.

Assignment of Errors.

The appellant assigns the following errors in the final decree of the circuit court:

1. The court erred in holding that a valid gift, *inter vivos*, of the bank deposits referred to in her bill was ever made by the testatrix.

2. And in holding that there was a sufficient delivery of said bank books or deposits to uphold a gift.

3. And in holding that there was an express declaration by the testatrix at the bank that she was merely a trustee for her life of said deposits for the benefit of the defendants, and that a trust was created in her which was effectual against her estate after her decease.

4. And in admitting evidence as to declarations and acts of the testatrix before or after the alleged acceptance of the alleged gifts to show her purpose in transferring the deposits, particularly that from Amanda Franklin and Alice E. Sparks and J. J. Miner and M. W. Cowan as to conversations one or two years after the transfers.

5. And in overruling the appellant's claim that the transfers, if effectual at all, were in partial redemption or satisfaction of the residuary bequests to the defendants in the will.

7*a* 6. And in not dismissing said bill, although it appeared further in evidence that said transfers amounted at most to an executory testamentary gift to take effect after the death of the testatrix and were not in testamentary form.

7. And in admitting the leading cross-question 53 and answer in the testimony of W. R. White.

8. And in admitting the 8th interrogatory to Mrs. George Platt and answer thereto, and 2d & 3d interrogatory to Mrs. Mary Bell Clark and answers thereto, and 2d interrogatory to Emma M. Clark and answer thereto, for reasons stated in the record.

By SIMEON E. BALDWIN,
Her Solicitor.

[Endorsed:] Martha A. Miller *vs.* Emma J. Clark *et als.* Plaintiff's appeal to the Supreme Court of the United States. Assignment of errors.

8 U. S. Circuit Court, District of Connecticut.

MARTHA A. MILLER
vs.
EMMA J. CLARK *et als.* } No. 619. In Equity.

Be it remembered that on the 3rd day of January, 1889, there was filed in court a bill in equity, which is in the words and figures following, viz:

Bill of Complaint.

Circuit Court of the United States for the District of Connecticut.

MARTHA A. MILLER *vs.* EMMA J. CLARK, MARY BELL CLARK, ELLEN C. Platt, Albertus N. Clark, Executor of the Last Will and Testament of Irene Clark, Deceased, Defendants.	No. 619.	In Equity.

To the judges of the circuit court of the United States for the district of Connecticut:

Your orator, Martha A. Miller, of Des Moines, Iowa, a resident and citizen of the State of Iowa, brings this her bill against Emma J. Clark and Mary Bell Clark, both of Orange, Connecticut, and Ellen C. Platt, of Milford, Connecticut, and Albertus N. Clark, of Orange, Connecticut, executor of the last will and testament of Irene Clark, deceased, each of whom are residents and citizens of the State of Connecticut; and thereupon your orator complains and says—

That your complainant was formerly Martha A. Buckingham, one of the legatees under the will of Irene Clark, deceased, which will is hereinafter described, and that complainant's name has since been changed by marriage to Martha A. Miller.

That on or about the 14th day of April, A. D. 1887, Irene Clark, late of Milford, New Haven county, State of Connecticut, died, leaving a will, of which the following is a true copy:

8*a* In the name of God, amen.

I, Irene Clark, of Milford, in the county of New Haven, being of sound mind and memory, do make and ordain this my last will and testament in manner and form following:

Imprimis.

SECTION 1. I give and devise to my husband, Bela Clark, of Milford, county of New Haven, all of my household furniture, including beds and bedding, pictures, and silver-plated ware.

SECTION 2. I give and devise to my niece, Irene M. Buckingham, wife of Botsford Buckingham, of New Milford, county of Litchfield, and my grandniece, Martha A. Buckingham, of said New Milford, and my niece, Emma J. Clark, wife of Albertus N. Clark, of the town of Orange, in the county of New Haven, and to Mary Bell Clark, wife of Clifford Clark, town of Orange, county of New Haven, and to Ellen C. Platt, wife of George E. Platt, of Milford, county of New Haven, and to Rosalie Merwin, daughter of Israel A. Merwin, of New Milford, county of New Haven, all of my personal estate, including my wearing apparel, to be equally divided between the above-mentioned parties.

Lastly. I do appoint and constitute Albertus N. Clark, of the town

of Orange, county of New Haven, executor of this my last will and testament.

In witness whereof I have set my hand and seal this 11th day of November, in the year of our Lord 1881.

IRENE CLARK. [SEAL.]

The foregoing was signed, sealed, declared by the said Irene Clark as her last will and testament in presence of us, who, in her presence and in the presence of each other, have hereunto subscribed our names.

JOHN J. MINOR.
MRS. LAURA A. SMITH.
ELIZABETH CLARK.

That on the 16th day of April, 1887, said will was duly admitted to probate in the probate court for the district of Mil-
8b ford, at Milford, Conn., and that said Albertus N. Clark, one of the above defendants, appeared and qualified as executor of the last will and testament of said Irene Clark, deceased, and filed his bond in the sum of fifteen thousand dollars, conditioned upon the faithful discharge of his duties as executor of said will, and is still pretending to act as such executor.

That said Irene Clark, at the time of her decease, left as a part of her estate the following-described property and money deposited in the Connecticut Savings Bank of New Haven, Connecticut, to wit, the sum of forty-five hundred dollars and accrued interest, which belonged to her estate.

That said sum so deposited was evidenced by three bank books, one of which was in the name of Ellen C. Platt, one in the name of Mary Bell Clark, and the other in the name of Emma J. Clark, each of which books represented the deposit of the sum of fifteen hundred dollars and accrued interest.

That said bank books were in the possession, custody, and control of said Irene Clark at the time of her death and came into the possession of Albertus N. Clark as executor, who was rightfully entitled to the possession of said books and to the deposits of money represented above as such executor.

That, as your orator is informed and verily believes, the said Albertus N. Clark, executor, willfully and wrongfully parted or is intending to part with the possession of said books and deliver the one in the name of Ellen C. Platt to said Ellen C. Platt, the one in the name of Mary Bell Clark to said Mary Bell Clark, and the one in the name of said Emma J. Clark to said Emma J. Clark, and that said books are now wrongfully in the possession of said parties.

That the money deposited in said bank and represented by said bank books of deposit was at the time said Albertus N. Clark made his inventory of said estate and, as your orator is informed and verily believes, is now in the Connecticut Savings Bank of New Haven, Connecticut.

That said Albertus N. Clark, executor, has filed his pre-
9 tended inventory of the assets of the estate of said Irene Clark, deceased, but that he has willfully and wrongfully

neglected and refused to include said deposit, to wit, the sum of forty-five hundred dollars, in his schedule of assets set out in his said inventory, and still neglects and refuses so to do, though often requested and demanded by your complainant.

That said sum of forty-five hundred dollars is wrongfully withheld from said estate as aforesaid, and is in danger of being taken by them to their own use and to the loss of the estate of said Irene Clark, deceased, and to this complainant.

Wherefore your orator humbly prays for judgment and a decree compelling said defendants, Emma J. Clark, Mary Bell Clark, and Ellen C. Platt, to turn over and deliver to said Albertus N. Clark, executor, the bank books now in their possession, and that said Albertus N. Clark, executor, be ordered to accept and receive said books and the money deposited in said Connecticut Savings Bank, and to include this said sum of forty-five hundred dollars and accrued interest as assets of the estate of said Irene Clark, deceased, and amend his inventory so as to include the same and make final disposition of said money according to the terms and provisions of the will of said Irene Clark, deceased, and for all further and appropriate relief in the premises, and that each of said defendants' names as parties to this bill be required to appear and answer the averments hereof and to declare their interest, if any, in and to said property and money, but not under oath, an answer under oath to this bill being expressly waived, and that upon final hearing hereof your orator may be adjudged entitled to the relief hereinbefore asked; and your orator will ever pray, &c.

And may it please this honorable court to grant the writ of subpœna directed to each of said defendants, to wit, Emma J. Clark, Mary Bell Clark, Ellen C. Platt, and Albertus N. Clark.

JAMES McMAHON, New Milford, Conn.,
Of Counsel and Solicitor.

LEWIS & ROYAL, Des Moines, Iowa,
Complainant's Solicitor.

And on the same day a writ of subpœna issued out of court, directed to the said respondents, which was duly served and returned, and which, with the return of service endorsed thereon, is in the words and figures following, viz:

10 The President of the United States of America to the marshal of the district of Connecticut sendeth greeting:

You are hereby commanded to summon Emma J. Clark, Mary Bell Clark, and Albertus N. Clark, executor of the last will and testament of Irene Clark, deceased, all of Orange, in said district, and Ellen C. Platt, of the town of Milford, in the State and district of Connecticut, respondents, to appear before the judges of the circuit court of the United States of America for the district of Connecticut, in the second circuit, in equity, on the first Monday of February, 1889, wheresoever the said court shall then be, to answer a bill of complaint exhibited against said respondents in said court by Martha A. Miller, of Des Moines, in the State of Ohio, and then and there

to answer the same and to do and abide by what said court may order and decree in the premises.

Make due service and return at least twenty days before said first Monday of February, A. D. 1889.

E. E. MARVIN, *Clerk.*

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Hartford, this third day of January, A. D. 1889.

E. E. MARVIN, *Clerk.*

The defendants are required to enter their appearance in said cause in the clerk's office of said court on or before the day at which this writ is returnable, or by the rules of said court said bill will be taken as confessed.

E. E. MARVIN, *Clerk.*

JAMES H. McMAHON,
New Milford, Complainant's Solicitor.

11 UNITED STATES OF AMERICA, }
District of Connecticut, New Haven County, } *ss:*

ORANGE AND MILFORD, *Jan'y* 3, 1889.

Then and there I served the within writ on Emma J. Clark Albertus N. Clark, and Ellen C. Platt, herein named, by delivering to and leaving with them a true and attested copy hereof, and upon Mary Bell Clark, herein named, by leaving with an adult member of the family at her last usual place of abode a true and attested copy hereof.

Attest: NATHAN D. BATES, *U. S. Marshal,*
By MILES B. PRESTON, *His Deputy.*

Fees:

Service	8 00
Copy	2 00
Travel	5 25
End.	75
	$16 00

And on the same day James H. McMahon, Esq., entered his appearance for the complainants, and on the 9th day of January, 1889, Messrs. Stoddard & Loomis entered their appearance for the defendants.

And on the 4th day of February, 1889, defendants filed demurrer in the words and figures following, viz:

12 Circuit Court of the United States for the District of Connecticut.

MARTHA A. MILLER
vs.
EMMA J. CLARK, MARY BELL CLARK, ELLEN C. PLATT, and ALBERTUS N. CLARK, Executor of the Last Will and Testament of Irene Clark, Deceased.

The demurrer of Emma J. Clark, Mary Bell Clark, Ellen C. Platt, and Albertus N. Clark, executor of the last will and testament of Irene Clark, deceased, to the bill of complaint of Martha A. Miller, complainant.

These defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur thereto, and for cause of demurrer say that it appears by the said complainant's own showing by her said bill of complaint that she has a plain, adequate, and effectual remedy at law, and that the said complainant is not entitled to the discovery or relief prayed by her said bill against these defendants.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants do demur to the said bill and to all the matters and things therein contained, and humbly pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, and they pray to be hence dismissed with their reasonable costs in this behalf sustained.

I certify that in my opinion the foregoing demurrer of Emma J. Clark, Mary Bell Clark, Ellen C. Platt, and Albertus N.
13 Clark, executor of the last will and testament of Irene Clark, deceased, defendants, to the bill of complaint of Martha A. Miller, complainant, is well founded in law and proper to be filed in the above cause.

WILLIAM B. STODDARD,
Solicitor and of Counsel for Defendants.

UNITED STATES OF AMERICA, *District of Connecticut*, } *ss:*

Emma J. Clark, Mary Bell Clark, Ellen C. Platt, Albertus N. Clark, executor of the last will and testament of Irene Clark, deceased, each being duly sworn, do each depose and say that they and each of them have read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

SEYMOUR C. LOOMIS,
Notary Public.

[SEAL.]

And on the 4th day of March, 1889, the parties, with their respective counsel, duly appeared and said demurrer was fully heard; and on the 11th day of March, 1889, opinion of court thereon was filed in the words and figures following, viz:

14 Circuit Court of the United States for the District of Connecticut.

MARTHA A. MILLER
vs.
EMMA J. CLARK and Others.

SHIPMAN, *J.:*

This is a bill in equity by one of the residuary legatees under the will of Irene Clark, praying that the executor be directed to inventory, as the property of said estate, the amount of three deposits of $1,500 each in the Connecticut Savings Bank, which are respectively evidenced by bank books in the names of three other of the residuary legatees; that the said three persons deliver to the executor said bank books now in their possession; that the executor receive the same and the money deposited in said bank and make final disposition of the same according to the terms of said will. The executor and the three persons in whose names said deposits stand are made parties.

The defendants have demurred to the bill upon the ground that the plaintiff has a plain, adequate, and complete remedy at law by suit upon the executor's bond.

It is true that it was held in Blakeman *v.* Sherwood, 32 Conn., 324, as stated in the syllabus of the opinion, as follows:

"Persons having an ultimate interest in estates as heirs, devisees, or creditors may cause suits to be instituted on probate bonds for their benefit for any neglect of duty which may work a substantial injury to them, and such interests will be sufficient, although it has not been definitely ascertained by settlement of the administration account, distribution, or other mode; and where a suit
15 was brought on a probate bond for the benefit of certain heirs for the neglect of an administrator to inventory certain personal property belonging to the estate it was held that the recovery should be of the value of the whole property not inventoried and not of the value of the particular interest of the heirs for whose benefit the suit was brought."

It would seem from this decision that the plaintiff can obtain in Connecticut the pecuniary relief which she seeks by a suit upon the bond, which suit can be brought before a decree or order of the probate court to inventory the property in question has been obtained.

This rule, under the statutes in regard to probate bonds, is not uniform in the different States. (2 Redfield on Wills, 83.)

But in the language of Judge Story in Pratt *v.* Northam, 5 Mason, 95, "it has been often decided by the Supreme Court that the equity jurisdiction of the United States is not limited or restrained by the local remedies in the different States; that it is the same in

all the States, and is the same which is exercised in the land of our ancestors, from whose jurisprudence our own is derived;" and, further, "in cases of the administration of assets courts of equity have a concurrent jurisdiction with courts of law." The learned judge, therefore, held that "the courts of the United States as courts of equity possess jurisdiction to maintain suits in favor of legatees and distributees for their portions of the estate of the deceased, notwithstanding there may be by the local jurisprudence a remedy at law on the administration bond in favor of the party."

The general principles which Judge Story considered are also discussed, not, however, with equal applicability to the facts of this case, in Thompson *v.* Brown, 4 Johns Ch., 619; Mayer *v.* Fulkrod, 4 Wash. C. C., 349; Parsons *v.* Lyman, 5 Blatchf., 170, and Payne *v.* Hook, 7 Wall., 425.

16 The demurrer is overruled. Let the defendants answer on the next rule day.

James H. McMahon, for the plaintiff; Wm. L. Bennett and Wm. B. Stoddard, for the defendants.

And on the 15th day of March, 1889, order overruling demurrer was filed in the words and figures following, viz:

17 In the Circuit Court of the United States for the District of Connecticut.

MARTHA A. MILLER
vs.
EMMA J. CLARK, MARY BELL CLARK, ELLEN C. PLATT, and ALBERTUS CLARK, Executor. } In Equity.

This cause came on to be heard upon the bill of complaint herein and the defendants' demurrer thereto, and was argued by counsel.

And thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That said bill of complaint is sufficient; that said demurrer be, and hereby is, overruled, and that defendants answer over to said bill of complaint; that such answer be made on or before the second day of April, 1889.

Dated Hartford, this 15th day of March, A. D. 1889.

N. SHIPMAN, *Judge.*

And on the 27th day of March, 1889, defendants' answer was filed in the words and figures following, viz:

18 *Answer.*

Circuit Court of the United States for the District of Connecticut.

MARTHA A. MILLER, Complainant,
vs.
EMMA J. CLARK, MARY BELL CLARK, ELLEN C. PLATT, ALBERTUS N. CLARK, Executor of the Last Will and Testament of Irene Clark, Deceased, Defendants. } In Equity.

The joint and several answers of Emma J. Clark, Mary Bell Clark, Ellen C. Platt, Albertus N. Clark, executor of the last will and testament of Irene Clark, deceased, defendants, to the bill of complaint of Martha A. Miller, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they, these defendants, severally answering, say—

That they have been informed, and believe it to be true, that the complainant was formerly Martha A. Buckingham, one of the legatees under the will of Irene Clark, deceased, and that complainant's name has been changed by marriage to Martha A. Miller; and they admit that on or about the 14th day of April, A. D. 1887,

19 Irene Clark, late of Milford, New Haven county, State of Connecticut, died, leaving a will, and they have been informed and believe it to be true that the copy of will in said complaint set out is a true copy of the said last will and testament of the said Irene Clark.

And these defendants, further answering, admit that on the 14th day of April, 1887, said will was duly admitted to probate in the district court for the district of Milford, at Milford, Connecticut, and that said Albertus N. Clark, one of these defendants, appeared and qualified as executor of said last will and testament and filed his bond in the sum of fifteen thousand dollars, conditioned upon the faithful discharge of his duties as executor of said will, and say that said Albertus N. Clark is still acting as such executor.

These defendants deny that said Irene Clark, at the time of her decease, left as a part of her estate the property and money deposited in the Connecticut Savings Bank of New Haven, Connecticut, described in the complainant's bill of complaint, to wit, said sum of forty-five hundred dollars and accrued interest, and that the same belonged to her estate.

These defendants admit that a certain sum of forty-five hundred dollars was, at the time of the decease of the said Irene Clark, deposited in said Connecticut Savings Bank, and that the same was

evidenced by three bank books, one of which was in the name of Ellen C. Platt, one of the defendants; one in the name of Mary Bell Clark, one of the defendants, and the other in the name of Emma J. Clark, another of the defendants; and that each of said books represented a deposit of the sum of fifteen hundred dollars and accrued interest, and that said bank books were in the possession and custody of the said Irene Clark at the time of her death, and that the same came into the possession of the said Albertus N. Clark; but they deny that the said Irene Clark at the time of her decease had any right to the possession, custody, or control of said bank books, or any of them, and that the same came into the possession of said Albertus N. Clark as executor, and that the said Albertus N. Clark, as said executor, was rightfully entitled to the possession of said books and to the deposits of money represented thereby.

These defendants, further answering the said bill of complaint, say that they have been informed and believe it to be true and therefor aver that at the time of the decease of the said Irene Clark the said bank book in the name of the said defendant, Ellen C. Platt, and the money deposited in the said Connecticut Savings Bank, evidenced thereby, were and that the same ever since have been and still are the absolute property of her, the said Ellen C. Platt, and that the said bank book in the name of the said defendant, Mary Bell Clark, and the money deposited in the said savings bank and evidenced thereby, were and the same are the absolute property of her, the said Mary Bell Clark, and that the said bank book in the name of the said defendant, Emma J. Clark, and the money deposited in the said savings bank and evidenced thereby, were and still are the absolute property of her, the said Emma J. Clark, and they deny that said bank books and said shares of money or any of them were at the time of the decease of the said Irene Clark the property of her, the said Irene Clark, and that said Irene Clark had any right, title, or interest therein.

These defendants, further answering, say that they deny that the said Albertus N. Clark, executor, did deliver the said bank book in the name of said Ellen C. Platt to her, the said Ellen C. Platt, and the said bank book in the name of said Mary Bell Clark to her, the said Mary Bell Clark, and said bank book in the name of Emma J. Clark to her, the said Emma J. Clark, but they say that the said Albertus N. Clark still holds said books and all of them in his possession.

These defendants, further answering, say that they have been informed and believe it to be true that the said shares of money deposited in said savings bank and represented by said bank books of deposit at the time said Albertus N. Clark as executor made his inventory of said estate of Irene were and now are in said savings bank, and that the said Albertus N. Clark, executor, has filed his inventory of the assets of the estate of said Irene Clark, deceased, and that he has not included said deposits in his schedule of assets set out in said inventory, but they deny that the said complainant has ever at any time made any request or demand upon him so to do.

21 These defendants, further answering, say that they deny that the sum of forty-five hundred dollars is wrongfully withheld from said estate, but they say that the same is rightfully held and possessed by the said Albertus N. Clerk for and in behalf of the said Ellen C. Platt, Mary Bell Clark, and Emma J. Clark, defendants, as hereinbefore set out.

And these defendants and each of them deny that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or neces-sary for the defendants or any of them to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is not true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as his honorable court shall direct, and humbly pray to be hence dismissed with their honorable costs and charges in this behalf most wrongfully sustained.

EMMA J. CLARK,
ELLEN C. PLATT,
MARY BELL CLARK,
ALBERTUS N. CLARK,
Executor of the Last Will and Testament of Irene Clark,
By their attorney, W. B. STODDARD.

22 And on the 3rd day of May, 1889, replication was filed in the words and figures following, viz:

Replication.

Circuit Court of the United States for the District of Connecticut.

MARTHA A. MILLER, Complainant,
vs.
EMMA J. CLARK, MARY BELL CLARK, ELLEN C. PLATT, Albertus N. Clark, Executor of the Last Will and Testament of Irene Clark, Deceased, Defendants. } In Equity.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

JAMES H. McMAHON,
Solicitor for the Complainant

23 And on the 10th day of July, 1889, complainant's and defendants' evidence was filed in the words and figures following, viz:

Complainant's Proofs.

United States Circuit Court, District of Connecticut.

MARTHA A. MILLER
vs.
EMMA J. CLARK *et al.*

Testimony taken under 67th rule, as amended, at house of Bela Clark, in Milford, on the part of complainant, before E. E. Marvin, U. S. commissioner, as special examiner, under notice annexed, May 9, 1889, at 2 p. m.

Present: J. M. Buckingham, of New York, and J. H. McMahon, of New Milford, for complainant, and William L. Bennett and William B. Stoddard, of New Haven, for defendants.

BELA CLARK, a witness on the part of the complainant, sworn, and examined by Mr. BUCKINGHAM:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Bela Clark; age, 78 years; residence, Milford; occupation, have been a groceryman; wholly out of business now.

Int. 2. Was you acquainted with the late Irene Clark, if so, what relation was she to you?

Ans. Oh, yes; she was my wife.

Int. 3. Did she die in this house; and, if so, when?

Ans. Yes, sir; she died here, two years ago last April, the 14th day.

Int. 4. How long was she confined of her last sickness?

Ans. I think about a fortnight, as near as I can calculate.

24 Int. 5. Was you present during that time, substantially?

Ans. Oh, yes; all the time.

Int. 6. Were you acquainted with her affairs—her property?

Ans. Oh, yes.

Int. 7. Did you know in what that property consisted—what shape it was in?

Ans. In personal, altogether.

Int. 8. Where was that personal property?

Ans. In different savings banks, most of it.

Int. 9. Did she have in her possession the bank books representing those deposits?

(Objected to as leading, and question withdrawn.)

Int. 10. Did you know of her having these deposits in savings banks?

Ans. I did.

Int. 11. How did you know it?

Ans. Because I saw the books; that was the evidence.

Int. 12. Did you see those books during her last sickness; and, if so, how many of them?

Ans. I saw all of the books. She gave them into my possession, and there were seven.

Int. 12½. Did the seven books include the three books described in this complaint and the answer herein, to wit, one in name of Ellen C. Platt, one in name of Mary Belle Clark, and one in name of Emma J. Clark?

(Objected to as leading, and because it does not appear that this witness knows what is in the complaint and answer, and because immaterial.)

(Complainant's counsel states that he offers this to show that among the seven books he saw were the three in the names of the defendants in this action.)

Ans. They did.

Int. 12½. State what transpired between you and Mrs. Clark at the time you saw these books.

(Objected to because what was said and done by the witness and his wife, not in the presence of the defendants, is inadmissible. Defendants object to any statement of Mrs. Clark in her own favor.)

25 Ans. I told her that I did not know that the books were ever taken away from the house. She told me to take them into my possession and put them up. I did so.

Int. 12½. Have you stated all that took place there?

Ans. Yes; I think so. The books were never taken out from my possession from that time till after her death.

Int. 13. Do you know where those seven books had come from at the time you have stated?

Ans. Oh, yes.

Int. 14. How did you know?

Ans. Because I saw the persons who had the books deliver them up.

Int. 15. Who did the persons deliver the books to?

(Objected, as any action of Mrs. Irene Clark not in the presence of defendants is inadmissible, irrelevant, and immaterial.)

Ans. Irene Clark.

Int. 16. Who were the persons who brought back these seven books and delivered them to Irene Clark?

(Objected to as irrelevant and immaterial.)

Ans. Mr. George Platt and his wife, Ella Platt.

Int. 17. What did Irene Clark do with these books at this time and say about them?

(Objected to as irrelevant and immaterial, unless it was in the presence of the defendants.)

Ans. She opened them and counted them to see if the seven books were all together, and then she looked into them to see that they

were all right, and she gave them into my possession and told me to put them up.

Int. 18. At the time these books were delivered to you by Irene Clark what shape were they in?

Ans. They were rolled up in a cloth and tied, seven in number.

Int. 19. What did you do with those books after Irene Clark's death?

Ans. I did not do anything with them.

Int. 20. To whom did you deliver them?

26 Ans. I did not deliver them to anybody.

Int. 21. What became of them, if you know?

Ans. Well, the administrator, Albertus N. Clark, took them into his possession and has them now, I suppose.

(At this point complainant's counsel asks permission of defendants' counsel to examine the bank books that are in the names of the three defendants, the said books being in court for the purpose of having them identified by the witness.)

(Defendants' counsel state they are willing to deliver the books for the purpose of identification by the witness to the witness.)

(Defendants' counsel thereupon deliver the books to the witness, and the witness having examined the three books, the following question was asked:)

Int. 22. Do you identify the books shown to you as three of the seven books delivered to you by Mrs. Irene Clark?

Ans. Yes; them are the three.

(Complainant's counsel again asks permission of the counsel of the defendants to examine the three books in question for the purpose of deciding whether they will offer them in evidence or not or for any purpose pertinent to this examination.)

(Defendants' counsel thereupon place the books in question in the hands of the complainant's counsel, and complainant's counsel have them marked by the examiner, for the purpose of identification, as follows: That of Nellie C. Platt, No. 1; that of Emma M. Clark, No. 2; that of Mary Belle Clark, No. 3.)

(Counsel for the complainant thereupon offer the books in evidence, and defendants' counsel consent that they shall be produced in evidence upon the trial of the case.)

Int. 23. Have you any personal interest in the result of this litigation?

Ans. No, sir.

Direct examination closed.

27 Cross-examined by Mr. STODDARD:

X Int. 24. Was Irene Clark your first or second wife?

Ans. Second.

X Int. 25. At the time your wife gave you these books was she in bed sick?

Ans. She was sitting up in bed.

X Int. 26. What did she say to you when she gave you the books?
Ans. She told me to put them up.
X Int. 27. Did she tell you where to put them?
Ans. No, sir.
X Int. 28. Where did you put them?
Ans. I put them in a trunk.
X Int. 29. Whose trunk?
Ans. Her own trunk.
X Int. 30. Was the trunk locked?
Ans. No, sir; it would have been better if it always had been.
X Int. 31. How long was this before she died?
A. About a fortnight, I should think, as near as I can calculate.
X Int. 32. After you put the books in this trunk when did you next see them?
Ans. I next saw them when they were taken out of the house.
X Int. 33. When was that?
Ans. That was the day she was buried.
X Int. 34. Where were the books when you first saw them on that day?
Ans. They were in the trunk.
X Int. 35. Who took them out of the trunk?
Ans. I cannot tell you. I think it was Mrs. Platt, but it does not make any difference who took them out.
X Int. 36. What room was your wife in when Mr. and Mrs. Platt brought the books back?
Ans. In the sitting-room.
X Int. 37. What room was you in?
Ans. I was there also; in the sitting-room.
28 X Int. 38. Was you not in the kitchen?
Ans. No. I think I was there, tending to my wife's business. I took care of her and furnished everything for her.

BELA CLARK.

Subscribed and sworn to before me this 9th day of May, A. D. 1889.

E. E. MARVIN,
U. S. Commissioner.

Adjourned to Friday, May 17th, at 2 p. m.

NEW HAVEN, *May* 17, 1889.

Present: Messrs. Buckingham & McMahon for complainant, and Mr. Stoddard and Mr. Bennett for defendants.

WM. R. WHITE, a witness on the part of the complainant, sworn, and examined by Mr. MCMAHON:

Int. 1. What is your name, age, residence, and occupation?
Ans. My name is Wm. R. White; age, 30 years; occupation, bank clerk or teller; residence, New Haven.
Int. 2. What office, if any, did you hold in the Connecticut Savings Bank of New Haven in the years 1884 and 1885?

Ans. Clerk of the Connecticut Savings Bank.

Int. 3. What were your duties as such clerk?

Ans. The receiving and paying out of money to depositors and issuing bank books.

Int. 4. Did you know Mrs. Irene Clark, wife of Bela Clark, of Milford, Connecticut, since deceased, during those years?

Ans. I did.

Int. 5. Was she, to your knowledge, a depositor in said savings bank before and after that time?

Ans. She was.

Int. 6. Did said Irene Clark, to your knowledge, have business transactions with said bank on or about October 15, 1884?

Ans. She did.

Int. 7. What business transaction with said bank did she have at that time?

29 Ans. She presented her book to be written up and requested that $1,500 be transferred from her book to each of the three persons whom she named.

Int. 8. You say she presented her book to said bank; will you examine the book which I now give to you and state if this is the book she so handed you to be written up?

Ans. Yes, sir; this is the book.

Int. 9. Does said book contain any entries made by you at said time as such officer of said bank; and, if so, what?

Ans. It does. It shows three transfers and one cash entry in my handwriting.

(Complainant's counsel offers the book in evidence in this case which the witness has now testified concerning, and it is marked Complainant's Exhibit Irene Clark's Second Deposit Book, No. 4886½.)

Int. 10. Will you please examine said book, now offered in evidence, and state if there is a name and number and date by which said book can be identified?

Ans. There are such number and date and name.

Int. 11. What name, number, and date are there on said book by which you identify it or by which it can be identified?

Ans. The name of Mrs. Irene Clark, the number of the bank book, No. 4886½, and the date of October 15, 1884.

Int. 12. Now, will you state what entries are on said book made by you on said day?

Ans. There are four charges on the book of date October 15th, 1884, as follows:

October 15th.	By transfer to	23109,	1,500.
"	"	" 23110,	1,500.
"	"	" 23111,	1,500.
"	cash,		82.51.

There is another entry on that book made on that day, but not dated that day, which is as follows: 1884, July 15. To interest, $682.51.

Int. 13. Were there pass books made out representing the three transfers that appear on that book; if so, in whose names?

Ans. There was one in the name of Mrs. Nellie C. Platt, No. 23109; one to Mrs. Emma M. Clark, No. 23110, and one to Mrs. Mary Belle Clark, No. 23111.

30 Int. 14. I now show you and offer in evidence three pass books on the Connecticut Savings Bank, New Haven, Conn., which are numbered respectively 23109, 23110, and 23111, and ask you in whose handwriting the same are and whether they are the books so made out by you to evidence said transfer.

Ans. They are in my handwriting, and they are the books evidencing the transfers mentioned.

Int. 15. What was done with said pass books when completed by you as stated?

Ans. They were handed by me to Mrs. Irene Clark.

Int. 16. Did she take them away with her on that day, if you know?

Ans. I don't know.

Int. 17. Were the entries that you have stated that you made on said pass book done in the regular course of the business of said bank?

Ans. They were.

Cross-examined by Mr. STODDARD:

X Int. 18. Do you remember whether Mrs. Irene Clark was alone on this day or whether there were one or two other ladies with her?

Ans. I am quite sure she was alone.

X Int. 19. When a deposit is made and when a pass book is given, is it the practice of the bank to take the signature of the new depositor?

(Complainant's counsel objects to the question on the ground that it appears that the persons to whom these pass books were made did not make the deposit.)

Ans. When the depositor is present, it is. He writes his name in the signature book.

X Int. 20. When the depositor is not present, what is your custom with regard to the signature?

(Complainant also objects to the question because it supposes an impossible state of things.)

31 Ans. We send to the owner of the book a printed slip, to be filled out by the owner and returned to the bank.

X Int. 21. And what is done with that printed slip after it is returned, if you know?

(Objected to by complainant's counsel as irrelevant and immaterial and not in line of proper cross-examination.)

Ans. The signature of the owner of the book is cut out and pasted into the signature book and the other particulars copied into the signature book.

(Complainant's counsel objects to the answer, as it assumes as a fact in this case what has not yet been proved, that those parties whose names were on these books were the owners of the books.)

X Int. 22. I will ask you to examine your signature book for 1884, if you have it.

Ans. I will.

X Int. 23. What book is this that you now have in your hands or before you?

(Objected to as irrelevant and immaterial and not in line of cross-examination, it not appearing that said book has any legitimate connection whatever with any subject gone into on the direct examination.)

Ans. The signature book of the Connecticut Savings Bank of New Haven.

X Int. 24. Is the book paged and numbered?

Ans. Not paged, but deposits numbered.

X Int. 25. I call your attention to the figures 23109, and ask you what those figures represent.

(Objected to as irrelevant and immaterial and not in the line of cross-examination.)

Ans. They represent the number of the bank book of Mrs. Nellie C. Platt.

X Int. 26. Having examined this entry upon this book, state whether you have anything further to say in regard to the previous question, as to whether any ladies accompanied Mrs. Irene Clark on the day these three bank books were made out.

32 (Complainant's solicitor objects to the question on the ground that it calls upon the witness not to explain his previous testimony, but to contradict it.)

Ans. No; I have nothing further to say.

X Int. 27. After examining this entry I will ask you if it may not be possible that Mrs. Nellie C. Platt was present with Mrs. Clark on that day?

(Complainant's solicitor objects to the question on the ground that the witness has fully answered that question in his previous answers.)

Ans. It is possible.

X Int. 27½. Is it probable?

Ans. It is not.

X Int. 28. The name of Nellie C. Platt appears written in that book, does it not?

Ans. It does.

X Int. 29. And not upon a slip of paper which has been pasted onto the book?

Ans. It is not on a slip of paper.

X Int. 30. Was you present when her name was written there, that you remember?

Ans. I don't remember.

X Int. 31. Why do you say, then, that it is not probable that she was present when the book was made out and delivered?

Ans. Because I am quite sure that Mrs. Clark was alone, and that this signature was written afterwards.

X Int. 32. You say you do not remember when Mrs. Platt signed the book, or of seeing her sign the book, did you not?

Ans. I did.

X Int. 33. Then why did you say that it was written afterwards?

Ans. Because I am quite sure that Mrs. Platt was not with Mrs. Clark at the time the transfer was made, and therefore it must have been done afterwards.

X Int. 34. In whose handwriting is that entry in connection with 23109, which we have been discussing? Is any part of it in yours?

33 (Objected to as irrelevant and inadmissible and as a matter in no way connected with the direct examination of the witness, and therefore not proper cross-examination, and it appearing that the book in question now was not put in and alluded to in the direct examination.)

Ans. Part of it is in mine and part of it is in that of Mrs. Irene Clark. The rest I don't know about.

(Defendants' counsel offers the signature book, concerning which the witness has just testified, in evidence, and the same is marked Defendants' Exhibit Signature Book.)

X Int. 35. In the entry following 23109 do you know who wrote the words "Mrs. Irene Clark?" And, if so, state who.

Ans. I do. It was written by Mrs. Irene Clark herself.

X Int. 36. Do you know who wrote the words "Mrs. Nellie Platt?" And, if so, state.

Ans. No; I do not.

X Int. 37. Do you know whether the words "Mrs. Nellie C. Platt" were written before or after Mrs. Irene Clark wrote her name?

Ans. I am not certain.

X Int. 38. Do you know who wrote the word "trustee" after the words "Mrs. Irene Clark;" and, if so, who?

Ans. I do. I did.

X Int. 39. The balance of the entry which is in writing is in whose handwriting?

Ans. Part of it is in mine, and the rest I don't know about.

X Int. 40. Which part of it yours?

Ans. "Mrs. C. only to draw" is in mine.

X Int. 41. Can you state whether that was written by you before or after the other entries that are on the book opposite that number?

Ans. I am not positive. I think they were written at the time Mrs. Clark wrote her name.

X Int. 42. And you don't know whether, at the time you wrote these words, those entries had been made or not?

Ans. No.

X Int. 43. The No. 23110, as to the entries opposite that number, do you know who wrote the name "Mrs. Emma M. Clark;" and, if so, who?

34 Ans. I do not.

X Int. 44. Is there any part of that entry in your handwriting; and, if so, what?

Ans. Yes, sir; the words "Mrs. Irene Clark, trustee, Milford, Ct.; "Dennis Andrews;" "Only Mrs. Irene Clark to draw;" "Orange, April 9th, 1846;" in fact all but the words "Mrs. Emma M. Clark."

X Int. 44½. As to the entries opposite No. 23111, who wrote the words "Mary Belle Clark"?

Ans. I don't know.

X Int. 45. In whose handwriting is the rest of the written entry?

Ans. In mine.

X Int. 46. Please examine the savings bank book No. 4886½, the three entries of 1,500 each you spoke of in your direct examination, and tell me what the figures 1,500 represent.

Ans. Each 1,500 represent $1,500.

X Int. 47. State whether these three entries on this book are credits or charges to Mrs. Irene Clark.

(Complainant's solicitor objects to the question as immaterial, irrelevant, and as the character of the entries is sufficiently shown by the book.)

Ans. They are charges against the account of Mrs. Irene Clark.

X Int. 48. And did they reduce Mrs. Irene Clark's credit at this bank to the amount of $4,500?

(Complainant's solicitor objects on the ground that it appears on the books put in evidence that it did not in fact reduce her credit at the bank and as calling on the witness for his opinion in a matter of law.)

Ans. They did as far as this account is concerned.

X Int. 49. You testified in your direct examination that Mrs. Clark presented her book to have it written up and to have $1,500 transferred from her book to each of three persons which she named. What persons did she name?

Ans. Mrs. Nellie C. Platt, Mrs. Emma M. Clark, Mrs. Mary Belle Clark.

X Int. 50. This, I understand, is what she said to you?

35 Ans. Yes, sir.

X Int. 51. Did you receive your instructions from Mrs. Clark or from the treasurer?

Ans. From Mrs. Clark.

X Int. 52. Did she tell you that those three ladies spoken of were her nieces?

Ans. I don't remember.

X Int. 53. Did she tell you she desired to give each of these three persons named $1,500?

(Complainant's solicitor objects to the question, as the transaction

was reduced to writing, as the witness has already stated, and as leading.)

Ans. Eventually, yes.

X Int. 54. Did she state to you that she desired to have the bank books so fixed or the entries so made that the money should belong to the persons named, but so fixed that they could not draw it and spend it during her life, or words to that effect?

(Complainant's solicitor objects to the question because it calls upon the witness for his construction of a question of law arising upon the facts and entries as they appear upon the books of the bank in connection with this transaction.)

Ans. She did.

X Int. 55. Have you in your possession ledger accounts representing these shown on those four books?

Ans. I have.

(It is agreed on the record by the counsel of the respective parties that copies of these ledger accounts, certified by the witness, may be introduced and used as evidence in the case instead of the original ledger of the bank.)

(Redirect examination by Mr. BUCKINGHAM:)

R. D. Int. 56. When you open trust accounts what is your custom as regards making the entry on the ledger?

Ans. We usually make it in the name of the *cestui que trust.* and write the name of the trustee above.

36 R. D. Int. 57. This book contains many such accounts, does it not?

Ans. Yes.

R. D. Int. 58. Do you know of any trust account on this book, the ledger of the bank, which is not entered as you have stated, except these accounts of Mrs. Nellie C. Platt, Mrs. Emma M. Clark, and Mrs Mary Belle Clark?

Ans. I don't know of any other.

R. D. Int. 59. Will you, when you transcribe the three accounts last mentioned, as agreed upon, also then please transcribe some of the prominent trustee accounts upon the ledger for my use?

Ans. I will.

R. D. Int. 60. At the time — this transfer of this account from Irene Clark to the three accounts, as has been testified, what rate of interest was Mrs. Clark's account drawing, according to the rule of the bank?

Ans. Two thousand dollars of it was drawing four per cent.; all over that three and one-half per cent. After the transfer all four of the accounts drew four per cent.

R. D. Int. 61. Were not all the signatures of these three nieces of Mrs. Clark put upon the signature book some considerable time after the transfer?

Ans. I know that two of them were; the third I am not certain about.

(It is admitted as a fact in the case by counsel of both parties that Mrs. Irene Clark left no children living at the time of her decease.)

(Recross-examined by Mr. STODDARD:)

Re-X Int. 62. Is it the rule of the bank that one depositor can have but one book?

Ans. It is the rule of the bank that one depositor can have but one book in one name.

(Re-redirect by Mr. BUCKINGHAM:)

Re-R. D. Int. 63. Do you allow parties to have deposits under fictitious names in your bank?

37 Ans. We do—that is, we allow them to put deposits in the names of others; just the names, they say.

WILLIAM R. WHITE.

Subscribed and sworn to this 17th day of May, 1889, before me—

E. E. MARVIN,
U. S. Commissioner.

NEW HAVEN, *May* 31, 1889.

Present: Parties and counsel as heretofore.

WILLIAM R. WHITE, a witness for the plaintiff, recalled:

Int. 1. You stated at your previous examination, in answer to question 61, that the signatures of two of the defendants on your signature book were placed on there some considerable time after the transfers were made, and as to the other you were not certain about.

Ans. Yes, sir.

Int. 2. Please state about how long after the transfers were made, as near as you can, that these signatures were put on there.

Ans. I cannot tell; but it must have been some time.

Int. 3. You have stated in your previous examination that all the writing on the signature book in relation to these three accounts, except the four names of "Irene Clark, Mary Belle Clark, Emma J. Clark, and Nellie C. Platt," are in your handwriting. Please look at the book and state whether you have so testified.

Ans. I testified that the words "Milford, Conn., Miles B. and Sarah B. Merwin, August 20," on one account, and then "Milford, Conn.," on another account, were not written by me, and also the four names alluded to. I wrote the name "Irene Clark" on both No. 23110 and on No. 23111.

Int. 4. Can you state when what writing you did on the signature book in relation to these three accounts was done?

Ans. I cannot.

Int. 5. Was it before or after the signatures of the parties were put on there?

38 Ans. It must have been after.

Int. 6. Can you tell how long after?

Ans. No, sir.

Int. 7. Was Mrs. Irene Clark present?

A. I don't know.

Int. 8. Did you ever see her after the transfer of those three accounts from her accounts, as you have before stated?

Ans. I think not.

Int. 9. Are you familiar with the business of the Connecticut Savings Bank in relation to its trust accounts with various parties and its mode of keeping trust accounts on its books in the usual course of business?

Ans. I am.

Int. 10. Will you please point out on the books of the bank an ordinary trust account?

(Objected to as immaterial and irrelevant.)

Ans. I will do so. I open our ledger to the trust account of Bessie M. Bascom, Sarah E. Bascom, trustee.

Int. 11. What would be the first entry on the books of the bank in that account? Will you please produce the book having the first entry of that account? The cash book, is it not?

(Objected to as immaterial and irrelevant.)

Ans. I here produce the bank's cash book.

Int. 12. Please state what the entry is on there in relation to that account.

(Objected to as immaterial and irrelevant.)

Ans. "Bessie M. Bascom, Sarah E. B., trustee, 23144 4."

Int. 13. Well, now, will you please turn to the signature book of that account and state how it is entered there?

(Objected to as irrelevant and immaterial.)

Ans. "Mrs. Sarah E. Bascom (trustee), N. H., October 24, 1875."

Int. 14. How, in the usual course of the business of the bank, would a pass book of this account be made out?

(Objected to as immaterial and irrelevant.)

39 Ans. It would be written "Bessie M. Bascom" and above it "Sarah E. Bascom, trustee, October 24, 1884, to cash, 4."

Int. 15. Please state how, in the regular course of business, your bank would open a trust account with books of your bank.

(Objected to as immaterial and irrelevant.)

Ans. We should place the name of the person for whom the deposit was made at the head of the account, with the name of the trustee over it.

Int. 16. What further steps, from beginning to end?

(Objected to as immaterial and irrelevant.)

Ans. We take the signature of the trustee in the signature book, the residence and the birth place, date of birth, and parents' names of the person for whom the deposit is made; then on the cash book, under that date, on the credit side, we write, first, the name of the

person for whom the deposit was made; then the name of the trustee, with the word trustee after it; then the number of the account on the pass book; then the amount of the deposit in figures; then we send for the signature of the person for whom the deposit is made, if he be not present at the time; then we issue a pass book, made out in the name of the person for whom the deposit is made on the cover, and also on the top of the inside page, and the name of the trustee written above, with the word "trustee" written after the name; then the date of the transaction entered and the words "to cash" or "to transfer;" then the amount in figures. The pass book is delivered to the trustee.

Int. 17. The same entries in relation to the trustee and the *cestui que trust.* would be made in the ledger as upon the cash book, would they not.

Ans. Yes, sir.

Int. 18. Will you produce the cash book upon which the entries were made of the transfers of Irene Clark to the three persons before named and designate it by name or number, so that it can be identified?

Ans. I produce it. It is the cash book of the bank containing the entries mentioned. It is "Cash Book O."

Int. 19. Please read the entries.

Ans. They are October 15, Mrs. Nellie C. Platt, Milford, 6 months, tr., 4886½, 23109, 1,500; Mrs. Emma M. Clark, Milford, 4886½, 23110, 1,500; Mrs. Mary Belle Clark, Milford, 4886½, 23111, 1,500.

(The complainant offers the said "Cash Book O" in evidence, and it is marked Complainant's Exhibit Cash Book O; also the ledger running from account 21500 to account 24999, and the same is marked Complainant's Exhibit Depositors' Ledger.)

Cross-examination by Mr. STODDARD:

X Int. 20. Do you remember whether you gave Mrs. Irene Clark the printed signature slips for signatures at the time of this transaction?

Ans. I don't remember; but that would be the usual course.

X Int. 21. There were signature slips issued upon this transaction, were there not, and returned to the bank?

Ans. Yes, sir.

X Int. 22. How many?

Ans. I cannot tell.

X Int. 23. How many do your books show were used?

Ans. Two.

X Int. 24. Do you remember who brought those slips in?

Ans. No, sir.

X Int. 25. Do you remember whether it was a lady or gentleman?

Ans. I do not.

WILLIAM R. WHITE.

Subscribed and sworn to before me this 31st day of May, 1889.

E. E. MARVIN,
U. S. Commissioner.

NATHAN MERWIN, a witness produced on the part of the complainant, sworn and examined by Mr. HUNTINGTON:

Int. 1. What is your name, age, residence, and occupation?

41 Ans. My name is Nathan P. Merwin; age, 53; residence, Woodbridge, Conn., and I am a farmer.

Int. 2. Did you know the late Irene Clark, of Milford?

Ans. Yes, sir.

Int 3. Please state what relations she had living at the time of her decease, so far as you know, beginning with the nearest.

Ans. She had one brother, Josiah P. Isbell, living in Milford, Conn.; one sister, Polly Merwin, living at New Milford, Conn., with Mrs. Irene Buckingham; no parents or children living. She had nephews and nieces in the Merwin family, as follows: Myself, Nathan P. Merwin; Israel A. Merwin, Frank A. Merwin, Irene M. Buckingham, and George A. Isbell.

Int. 4. Now take up the grandnieces.

Ans. Mary Belle Clark, Rosalie Merwin, Charles A. Merwin, James D. Merwin, Nellie C. Platt, George A. Merwin, Willie M. B. Merwin, Emma I. Clark, Wellington M. Andrews, Frank A. Merwin, Elbert W. Merwin, Martha I. Miller, of Des Moines, Iowa; B. M. Buckingham, and Charles Buckingham.

NATHAN P. MERWIN.

Subscribed and sworn to before me May 31, 1889.

E. E. MARVIN,
U. S. Commissioner.

(Complainant's counsel offers in evidence a copy of the inventory of Irene Clark, and the same is marked Complainant's Exhibit Inventory; also copies of bank accounts in question, which are marked "Connecticut Savings Bank Transcripts;" also copy of earlier will of Irene Clark, which is marked "Exhibit First Will.")

(Defendants' counsel objects to the introduction of the last exhibit, 1, because it is not proved to be the will of Irene Clark; 2, because it is immaterial and irrelevant.)

Adjourned to June 17, 1889, Milford Hotel, Milford, nine a. m.

42 COMPLAINANT'S EXHIBITS.

EXHIBIT FIRST WILL.

Know all men I, Irene Clark, of Milford, county of New Haven, State of Connecticut, being of sound and disposing mind and understanding, do make and ordain this my last will and testament in manner and form following:

Item 1st. I give and devise to my husband, Bela Clark, and to his heirs all my household furniture, beds and bedding.

Item 2d. I give and devise to my niece, Irene M. Buckingham, of New Milford, in Litchfield county, and to heirs the sum of two thousand dollars in cash; also all my wearing apparel.

Item 3d. I give and devise to my grandniece, Martha A. Buckingham, of New Milford, in Litchfield county, and to her heirs the sum of two thousand dollars in cash.

Item 4th. I give and devise to my grandniece, Emma I. Clark, wife of Albertus N. Clark, of Orange, and to her heirs the sum of one thousand dollars in cash.

Item 5th. I give and devise to my grandniece, Ellen C. Platt, wife of George E. Platt, of Milford, and to her heirs the sum of one thousand dollars in cash.

Item 6th. I give and devise to my grandniece, Mary Bell Clark, wife of Clifford E. Clark, of Orange, and to her heirs the sum of five hundred dollars in cash.

Item 7. I give and devise to my grandniece, Rosalie Merwin, of Milford, and to her heirs the sum of five hundred dollars in cash.

And I hereby direct my executor and executrix, hereinafter named, to pay each and all the above-devised legacies within one year after my decease: Provided, that in case of loss to my estate or from any other cause the amount of my estate shall be insufficient to pay the said legacies in full that my executor and executrix shall pay to each and all the legatees their just and equitable proportion of the same.

Item 8. All the remainder of my estate, if any there be,
43 I give and devise to my niece, Irene M. Buckingham, of New-Milford, and to her heirs.

Item 9th. I hereby name and appoint Albertus N. Clark, of Orange, as executor and Irene M. Buckingham, of New Milford, as executrix of this my last will and testament.

I hereby revoke all wills heretofore made by me.

In testimony whereof I have hereunto set my hand and seal, at Milford, this 17th day of November, A. D. 1879.

IRENE CLARK. [SEAL.]

Signed, sealed, published, and declared by the above-named testa*tor*, Irene Clark, at Milford, this 17th day of November, A. D. 1879, in presence of—

SAMUEL B. GUNN.
MRS. LAURA A. SMITH.
MRS. SUSAN I. BALDWIN.

STATE OF CONNECTICUT, } *ss:*
County of New Haven. }

MILFORD, *Nov.* 17, 1879.

Personally appeared —— —— and all and severally made solemn oath that they saw the testatrix sign the above instrument, and heard her publish and declare the same to be her last will and testament; that they signed the same as witnesses in her presence and in presence of each other, and that they verily believe

that at the time of such signing and declaring the said testatrix was of sound and disposing mind and understanding.

Attest: SAMUEL B. GUNN,
Commissioner of Superior Court for County of New Haven.

44 *Irene Clark's Inventory.*

COMPLAINANT'S EXHIBIT INVENTORY. E. E. Marvin, Commissioner.

Cash in bank:

National Savings Bank	------	$496 52
New Haven Savings Bank	------	1,656 08
Connecticut Savings Bank	------	1,214 47
Bridgeport Savings Bank	$3,753 34	3,501 80
Interest for July, 1889	56 29	
Cash on hand	------	582 96
One share Merch't Nat. Bank stock	------	58 00
		7,509 83

Household goods:

Furniture in parlor	50 00	
Bedstead and bedding in front chamber	8 00	
Old feather bed	5 00	
Furniture, bedstead and bedding in bed-room	35 00	
Furniture in sitting-room, old	20 00	
Silver-plated tea set and waiter	50 00	
One-half dozen silver knives and forks	7 00	
One-half dozen plated dinner forks	2 50	
One-half dozen silver teaspoons	6 00	
Thirteen linen towels	1 30	
Three table spreads, 50 cents	1 50	
Lot of old crockery in cupboard	5 00	
		191 30

Wearing apparel:

One Paisly shawl	10 00	
One black silk skirt	1 00	
One black silk dress, old	2 00	
One black worsted dress	2 00	
One plaid silk dress	5 00	
One black muslin dress, old	50	
One calico dress, old	25	
One calico dress, yellow, old	25	
One brown worsted dress	1 00	
45 One striped worsted red shawl	6 00	
One striped worsted light shawl	4 00	
One white silk shawl	3 00	

Nine pairs white cotton stockings	$1 35	
One calico dress, new	1 00	
One calico dress skirt	75	
Four chemise, 60 cents	2 40	
Twenty-five yards calico, 4 cents	1 00	
One brown linen underskirt	75	
One figured underskirt	50	
Two pairs of slippers, new, $1.00	2 00	
One P K underskirt	1 00	
Two white skirts	1 00	
Three night dresses	75	
Lot of old underclothing	1 00	
		$48 50
		$7,749 63

Milford, April 20, 1887.

THEODORE PLATT,
C. W. BEARDSLEY,
Appraisers.
ALBERTUS N. CLARK,
Executor.

Presented, sworn to, accepted, and ordered for record this 20th day of April, 1887.

WILLIAM G. MITCHELL, *Judge.*

I hereby certify the within and foregoing to be a true copy of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court on this 24th day of May, A. D. 1889.

[SEAL.] JOHN W. FOWLER, *Clerk.*

STATE OF CONNECTICUT, } ss:
County of New Haven, }

I, George M. Gunn, sole and presiding judge of the court of probate within and for the district of Milford, in said county
46 of New Haven, hereby certify that John W. Fowler, whose name is above written and subscribed, is, and was at the date thereof, clerk of the court of probate within and for the district of Milford, in said New Haven county, and keeper of the records and seal thereof, duly commissioned and sworn; that I am well acquainted with his signature and know the above to be his, and that the above certificate by him made is in due form to authenticate the records, files, and proceedings of said court.

In testimony whereof I have hereunto set my hand this 25th day of May, A. D. 1889.

GEORGE M. GUNN, *Judge.*

Connecticut Savings Bank Transcripts.

Mrs. Irene Clarke. 4886½. Milford.

1873.			1871.	6 m.	
Aug. 28.	To cash ----	100 00	Sept. 6.	Trans. 531	3270 09
1877.				6 m.	
Aug. 7.	" ----	100 00	Sept. 5.	" 821	154 54
1881.			1872.		
May 11.	" ----	268 73	Jan. 15.	Int. ------	102 73
	Balance above	5000 00	July 15.	" ------	105 82
			1873.		
			Jan. 15.	" ------	108 99
			July 15.	" ------	112 26
			1874.		
			Jan. 15.	" ------	112 63
			July 15.	" ------	116 01
			1875.		
			Jan. 15.	" ------	119 49
			July 15.	" ------	123 07
			1876.		
			Jan. 15.	" ------	126 76
			July 15.	" ------	108 80
			1877.		
			Jan. 15.	" ------	111 52
			July 15.	" ------	109 74
			1878.		
			Jan. 15.	" ------	103 10
			July 15.	" ------	93 71
			1879.		
			Jan. 15.	" ------	95 58
			July 15.	" ------	97 49
			1880.		
			Jan. 15.	" ------	99 44
			July 15.	" ------	101 43
			1881.		
			Jan. 15.	" tax,7.93	95 53
		5468 73			5468 73

47 Mrs. Irene Clarke. 4886½. Milford.

1884.				1881.	6 m.		
					Balance bro't up--		5000 00
Oct. 15.	To trans.	23109.	1500 00	July 15.	Int. tax, 7.50-		92 50
				1882.			5092 50
" "	"	23110.	1500 00	Jan. 15.	" 7.73-		94 12
							5186 62
" "	"	23111.	1500 00	July 15.	" 7.96-		95 77
				1883.			5282 39
" "	To cash-----		82 51	Jan. 15.	" 8.20-		97 44
1888.							5379 83
Aug. 13.	To trans.	30402.	1288 79	July 15.	" 8.44-		99 15
				1884.			5478 98
				Jan. 15.	" 8.69-		100 88
							5579 86
				July 15.	" 8.94-		102 65
				1885.			5682 51
				Jan. 15.	Int. --------		22 00
							5704 51
				July 15.	" --------		22 44
				1886.			5726 95
				Jan. 15.	" --------		22 88
							5749 83
				July 15.	" --------		23 34
				1887.			5773 17
				Jan. 15.	" --------		23 81
							5796 98
				July 15.	" --------		24 28
				1888.			5821 26
				Jan. 15.	" --------		24 77
							5846 03
				July 15.	" --------		25 27
			5871 30				5871 30

Milford. 23109.

Mrs. Nellie C. Platt.

Date.	Trans.	Withdrawn.	Interest.	Deposited.	Balance.
				6 m.	
Oct. 15, '84	4886½			1500	
Jan. 15, '85			30 00	30	
July 15, "			30 60	30 60	1560 60
Jan. 15, '86			31 21	31 21	1591 81
July 15, "			31 83	31 83	1623 64
Jan. 15, '87			32 47	32 47	1656 11
July 15, "			33 12	33 12	1689 23
Jan. 15, '88			33 78	33 78	1723 01
July 15, "			34 46	34 46	1757 47
Jan. 15, '89			35 14	35 14	1792 61

48 Milford. 23110.

Mrs. Emma M. Clark.

Date.	Trans.	Withdrawn.	Interest.	Deposited.	Balance.
				6m.	
Oct. 15, '84	4886½			1500	
Jan. 15, '85			30 00	30	
July 15, "			30 60	30 60	1560 60
Jan. 15, '86			31 21	31 21	1591 81
July 15, "			31 83	31 83	1623 64
Jan. 15, '87			32 47	32 47	1656 11
July 15, "			33 12	33 12	1689 23
Jan. 15, '88			33 78	33 78	1723 01
July 15, "			34 46	34 46	1757 47
Jan. 15, '89			35 14	35 14	1792 61

Milford. 23111.

Mrs. Mary Belle Clark.

Date.	Trans.	Withdrawn.	Interest.	Deposited.	Balance.
				6m.	
Oct. 15, '84	4886½			1500	
Jan. 15, '85			30 00	30	
July 15, "			30 60	30 60	1560 60
Jan. 15, '86			31 21	31 21	1591 81
July 15, "			31 83	31 83	1623 64
Jan. 15, '87			32 47	32 47	1656 11
July 15, "			33 12	33 12	1689 23
Jan. 15, '88			33 78	33 78	1723 01
July 15, "			34 46	34 46	1757 47
Jan. 15, '89			35 14	35 14	1792 61

(Copy of portion of credit side of cash book under date of October 15, 1884.)

Cash Account.

Date.		No. acct. O.	No. acct. N.	Deposits.
	Mrs. Nellie C. Platt, Milford, trans.	4886½	23109	1500
	Mrs. Emma M. Clark, trans. --	"	23110	1500
	" Mary Belle Clark, " --	"	23111	1500

49 (Copy of portion of Dr. side of cash book, under date of October 15, 1884.

Cash Account.

Date.			No. acct.	Deposits.
	Irene Clarke, trans., 23109----		4886½	1500
	" " 23110----		"	1500
	" " 23111----		"	1500
	" cash ----------		"	82 51

(Sample of trustee account as desired.)

23292.

Gustavus Eliot, trustee.

Henry Whitney Eliot.

Date.	Trans.	Withdrawn.	Interest.	Deposited.	Balance.
Dec. 17, '84				25	
July 15, '85			50	50	
Jan. 15, '86			51	51	
Feb. 3, "		26 01			
		26 01		26 01	

(Sample of trustee account.)

21817.

Frank I. Gorham, trustee.

Frederick S. Gorham.

Date.	Trans.	Withdrawn.	Interest.	Deposited.	Balance.
Jan. 25, '84				5 00	
July 15, "			05	05	
Jan. 15, '85			10	10	5 15
July 15, "			10	10	5 25
Jan. 15, '86			10	10	5 35
July 15, "			10	10	5 45
Jan. 15, '87			10	10	5 55
July 15, "			11	11	5 66
Jan. 15, '88			11	11	5 77
July 15, "			11	11	5 88
Jan. 15, '89			11	11	5 99

50 Sample of trustee account.

24980.

Trustee for Alfred Rutter's estate.

John A. Stanton. Clinton.

Date.	Trans.	Withdrawn.	Interest.	Deposited.	Balance.
				6 m.	
Nov. 20, '85	19640			400	
Jan. 15, '86			8 00	8	
July 15, "			8 16	8 16	
July 24, "		416 16			
		416 16		416 16	

I hereby certify that the foregoing are true copies of the accounts as they appear on the books of the Connecticut Savings Bank of New Haven.

WM. R. WHITE, *Clerk.*

New Haven, June 11, 1889.

Defendants' Evidence.

MILFORD, CONN., *June* 17, 1889.

Testimony on the part of the defendants, taken before E. E. Marvin, U. S. commissioner and special examiner.

Present: Messrs. Buckingham and McMahon, on the part of the complainant; Messrs. Stoddard & Bennett, on the part of defendants.

Mrs. AMANDA FRANKLIN sworn, and examined by Mr. STODDARD:

Int. 1. What is your name, age, and residence?

Ans. My name is Amanda Franklin; age, eighty years, and Milford is my place of residence; have always lived there since I was married—sixty years.

Int. 2. Were you acquainted with the late Irene Clark, of this place?

51 Ans. Yes. She and I lived neighbors twenty-five years.

Int. 3. How long have you known her?

Ans. Ever since I was married; all my life—that is, sixty years. We have always visited occasionally. She was just about my own age.

Int. 4. Did she ever visit you since you resided in this house?

Ans. Yes; time and again.

Int. 5. About how long is it ago that she made her last visit?

Ans. It is three years, I think—between three and four. I could not tell the date.

Int. 6. Did she say anything to you about her nieces and any money transactions at that visit; and, if so, what?

(Objected to as irrelevant and immaterial.)

Ans. She spoke, and she said she had been making her arrangements. She said, "I have my business all fixed just as I intend it to be—just as I want it." She said she had given them a certain amount. She did not tell the amount of money, and I did not ask her. She mentioned these three nieces—Nellie Platt, Mary Belle, and Martha's daughter. She said, You know who she is; and I said, Yes; I know who she is. She said, Emma Andrews, now Mrs. Clark.

Int. 7. Did she say anything at that interview about its being her own money and about her having a right to do as she chose with it?

(Objected to as immaterial and irrelevant and as being leading. Question withdrawn.)

Int. 8. Did she say anything more that you have related about this matter at this time?

(Objected to as irrelevant, immaterial, and incompetent.)

Ans. I asked her why she was so partial, and she said she had good reasons.

Int. 9. Do you remember anything more that she said upon this subject?

Ans. Nothing in particular.

52 Int. 10. Did she say anything about whose money this was; and, if so, what?

(Same objection.)

Ans. She said it was her own, and she had a right to do as she pleased with it. I said, I would if I was her.

Int. 11. Was any one present when this conversation was had between you and Mrs. Clark?

Ans. Mrs. Sparks, my daughter; she heard it.

Direct examination closed.

Cross-examination waived.

AMANDA FRANKLIN.

Subscribed and sworn to before me this 17th day of June, A. D. 1889.

E. E. MARVIN,
U. S. Commissioner and Special Examiner.

Mrs. ALICE E. SPARK sworn, and examined by Mr. STODDARD:

Int. 1. What is your name, age, and residence?

Ans. My name is Alice E. Sparks; my age is forty-one years, and my residence is Milford, Conn.

Int. 2. Are you the daughter of Mrs. Franklin, the last witness, and was you present and heard the conversation just related by her?

(Objected to as immaterial, irrelevant, and incompetent.)

Ans. I am, and was present at that conversation.

Int. 3. You may state that conversation as you recollect it.

(Same objection.)

Ans. Mrs. Clark said she had given a certain amount of money to her three nieces. She said, I have been over and had things fixed just as I intend and as I want to have it. Then she said that she had given Mrs. Platt a sewing-machine, but when the day and date was I don't know; that was about all that I remember about it.

Int. 4. Did she name her three nieces?

(Same objection.)

53 Ans. Yes; she did.

Int. 5. If she named them I would like to have you state what she said.

(Same objection.)

Ans. All I could remember she said she had given each one—Mrs. Clark; then she spoke of Mary Belle, and I asked her who Mary Belle was, for I did not know. She told me that she married Clifford Clark, and then I knew who she was. She mentioned Mrs. Platt; she was one of them. Then she said it was her own, and she had a right to do as she pleased with it.

Direct examination closed.

Cross-examination waived.

ALICE E. SPARKS.

Subscribed and sworn to before me this 17th day of June, A. D. 1889.

E. E. MARVIN,
U. S. Commissioner and Special Examiner.

Mr. JOHN J. MINER sworn, and examined by Mr. BENNETT:

Int. 1. What is your name, age, residence, and occupation?

Ans. John J. Miner; I shall be seventy next month; I reside in Newark, N. J.; have no business; have retired from business.

Int. 2. Have you ever resided in Milford; and, if so, for how long?

Ans. I was born here, and with the exception of four or five years have always lived here until last year.

Int 3. Were you acquainted with the late Irene Clark?

Ans. I was.

Int. 4. And what was the length of that acquaintance?

Ans. Since I was sixteen.

Int. 5. Did you ever draft a will for Mrs. Irene Clark?

Ans. I did.

Int. 6. Can you give the date of that transaction?

Ans. I think, November, 1881.

Int. 7. Did you have any conversation with Mrs. Irene
54 Clark at that time in regard to her three nieces, Mrs. Platt, Mrs. Mary Belle Clark, and Mrs. Emma M. Clark?

(Objected to as irrelevant, inadmissible, and incompetent.)

Ans. I did.

Int. 8. Please state the conversation.

(Same objection.)

Ans. The conversation was an extended one, and the impression upon my mind was that she told me at that time that she had made a transfer of certain bank books; that was my first impression. I think I was wrong there, for subsequently she told me that she had done so, stating the amount.

Int. 9. Can you give the date of the subsequent conversation?

(Same objection.)

Ans. I cannot. It was quite a long time afterwards, and I never charged my mind with it.

Int. 10. Can you give approximately the number of years this was after drawing the will?

(Same objection, and as leading.)

Ans. I might approximately, but I could not within a year. I was in the habit of visiting there occasionally, and at what conversation it occurred it would be impossible for me to tell.

Int. 11. State as near as you can the number of years after the drafting of the bill it was that you had this second conversation.

(Same objection.)

Ans. It might have been three or four years, possibly, and more, for what I know. I never charged my mind with it and have never thought of it since.

Int. 12. Where was the second conversation held?

(Same objection.)

Ans. At her home, at Mr. Clark's, her husband's house.

Int. 13. Please state this second conversation.

(Same objection, and as already answered.)

55 Ans. The conversation was upon various matters, and this occurred among other things about her property, as she was accustomed to do with me. It was pretty difficult for her to talk about anything but property with me, and in the course of it she alluded to these books; that she had done so, and I supposed it had been, and I told her so; I supposed it had been done before the will was made. That was about all that I can remember of the conversation, as I was not particularly impressed with it and have had many of that character in my lifetime.

Int. 14. You said that Mrs. Clark alluded to these books and said

she had "done so." I would like you to state what she said had been done.

(Same objection.)

Ans. Simply that she had transferred them. She had been to New Haven and transferred them to these parties.

Int. 15. Did she name the parties to whom the transfer had been made?

Ans. It is impossible for me to remember. I knew what she meant. The parties had been named to me previously, and it is impossible for me to say whether she named them at that time.

Int. 16. At what time previously had the parties been named to you?

(Same objection.)

Ans. They were either named at the time of making the will or at some time later.

Int. 17. Was any amount or amounts of money named to you as transferred at any time by Mrs. Clark?

(Same objection.)

Ans. I think it was $1,500 each for the three of them.

Int. 18. When had Mrs. Clark named this sum of $1,500 each for the three of them?

(Same objection.)

Ans. I think she named it at the time of making the will.

Int. 19. Will you state the names of the parties to whom the books were transferred, as stated to you by Mrs. Clark?

56 (Same objection, and as assuming that the witness has stated something which he has not.)

Ans. I cannot state the names. I could not remember them. I have heard them read this morning, but can't remember them. I only know them by their husbands; as wives of certain men.

Int. 20. Did Mrs. Clark, at any one of these conversations, name or describe to you the persons to whom the said transfers had been made?

(Same objection, and as having been already asked and answered.)

Ans. She did.

Int. 21. Now, will you please state what she said?

(Same objections.)

Ans. She called them by their names, the names of her nieces, and as the wives of the two Clarks and Mr. Platt.

Direct examination closed.

Cross-examined by Mr. BUCKINGHAM:

X Int. 22. You have spoken or said that you drafted a will for Mrs. Irene Clark in 1881. Was that the will executed?

Ans. It certainly was.

X Int. 23. And the extended conversation that you have spoken of that you had with her at that time was in reference to the disposition of the property made by her by that will?

Ans. It was.

Cross-examination closed.

JOHN J. MINER.

Subscribed and sworn to before me this 17th day of June, A. D. 1889.

E. E. MARVIN,
U. S. Commissioner and Special Examiner.

Mrs. MARY W. COWAN sworn, and examined by Mr. STODDARD.

Int. 1. What is your name, age, and residence?

Ans. My name is Mary W. Cowan. I am forty years of age, and I reside in Milford.

57 Int. 2. Did you know the late Mrs. Irene Clark?

Ans. I did.

Int. 3. How long were you acquainted with her?

Ans. Fifteen or sixteen years.

Int. 4. How near to her residence did you reside the last few years of her life?

Ans. Within a stone's throw.

Int. 5. Did you often meet her at your house or hers?

Ans. At both.

Int. 6. Did you ever have any conversation with her about her three nieces and her money matters?

(Objected to as irrelevant, inadmissible, and incompetent.)

Ans. Yes, sir.

Int. 7. Won't you state what she said?

(Same objection.)

Ans. She told me that she had been to New Haven and took out three bank books for her nieces, and she had given them each $1,500. She told me she took Mrs. Platt with her when she went to New Haven; she had given them $1,500 apiece—that is, to Nell, Mary Belle, and Emma; that is the way she named them.

Int. 8. Can you tell me about how long ago this conversation was?

(Same objection.)

Ans. Between three and four years ago.

Direct examination closed.

Cross-examination waived.

Mr. ISRAEL A. MERWIN sworn, and examined by Mr. STODDARD

Int. 1. What is your name, age, residence, and occupation

Ans. My name is Israel A. Merwin; age, 70 years; residence, Milford; occupation, farmer.

Int. 2. How long have you lived in Milford?

Ans. Ever since I was born.

Int. 3. Did you know the late Irene Clark?

Ans. I did.

58 Int. 4. How long had you known her?

Ans. Ever since I was big enough to know her—ever since I was ten years old.

Int. 5. Are you a relative?

Ans. She was an aunt of mine—my mother's sister.

Int. 6. You are the father of Mary Belle Clark?

(Same objection.)

Ans. Yes, sir.

Int. 7. State whether or not you had any conversation with Mrs. Irene Clark in reference to any money transaction between herself and Mary Belle Clark, Mrs. Nellie Platt, and Mrs. Emma M. Clark; and, if so, state the conversation.

(Same objection.)

Ans. I had a conversation. I called there one day to see her. She said she had made the three girls a present. I asked her who, and she stated the three girls that you have named. She said she had given them $1,500 apiece—a bank book. I laughed at her. One of these was my daughter, and I said why did not you give the same to my younger daughter? She said: If I did that somebody will be after her for her money; the other is married.

Int. 8. Had you more than one daughter at that time?

(Same objection.)

Ans. I had two—the one married and the other not at that time.

Int. 9. Did you repeat this conversation to your daughter, Mary Belle Clark?

(Same objection.)

Ans. I guess likely we talked about it.

Int. 10. Was there anything further said in this conversation between Mrs. Clark and you?

(Same objection.)

Ans. Yes. We sat and talked an hour or more. It would take till to-morrow morning to write all we said.

Int. 11 Did Mrs. Clark state to you whether or not she had seen your daughter about it?

59 (Same objection.)

Ans. I don't recollect whether she did or not.

Int. 12. Did she state whether or not she had sent for your daughter?

(Same objection.)

Ans. I think she did.

Int. 13. State what she said in that connection.

(Same objection.)

Ans. She told me she had made out three bank books and had sent for the girls to come and see her, but I cannot tell whether they came that or the next day.

Direct examination closed.

Cross-examined by Mr. BUCKINGHAM:

X Int. 14. About when was this conversation?

Ans. It was after she had been to New Haven and made the bank books out.

X Int. 15. Did you ever see the will of Irene Clark, that was probated, or hear it read?

Ans. Yes, sir.

X Int. 16. Were the two persons named in that will as Mary Belle Clark and Rosalie Merwin, as legatees, children of yours?

Ans. Yes, sir.

I. A. MERWIN.

Subscribed and sworn to before me the 17th day of June, A. D. 1889.

E. E. MARVIN,
U. S. Commissioner and Special Examiner.

Mrs. GEORGIANA HUBBELL sworn, and examined by Mr. STODDARD:

Int. 1. What is your name, age, and residence?

A. My name is Georgiana Hubbell; age, 40 years; residence, Milford.

Int. 2. Were you acquainted with the late Mrs. Irene Clark?

60 Ans. I was.

Int. 3. How long were you acquainted with her?

Ans. The last twelve or fifteen years.

Int. 4. How near to her residence did you reside during this time?

Ans. A very short distance; about three times as far as across this street—a half a minute's walk.

Int. 5. Please state if you often met her, and where.

Ans. I met her at Mr. Clark's house, and also at my own house.

Int. 6. State whether you ever had any conversation with her about her nieces, the Mrs. Clark and Mrs. Platt, and her money matters.

(Objected to as irrelevant, immaterial, and incompetent.)

Ans. I did.

Int. 7. Won't you state the first conversation you had with her about it?

(Same objection.)

Ans. She told me that she was going to New Haven to take out some books in the girls' names.

Int. 8. Did she state anything further in this first conversation?

(Same objection.)

Ans. Yes.

Int. 9. Please state what further you remember was said.

(Same objection.)

Ans. She asked me to go to New Haven with her. I told her yes, but the day she was expecting to go I had made a previous engagement and she asked Mrs. Platt to go with her.

Int. 10. Did you have a conversation with her afterwards?

(Same objections.)

Ans. I did.

Int. 11. Won't you please state what she said?

Ans. She said she had been to New Haven and had given the girls $1,500 each—Nell, Mary Belle, and Emma.

61 Int. 12. Did she tell you anything about who went with her at this second conversation?

(Same objection.)

Ans. She did. She said that Nell went with her, and that she gave her a sewing-machine.

Direct examination closed.

Cross-examination by Mr. McMahon:

X Int. 13. Were you present when, as you say, Mrs. Clark asked Mrs. Platt to go with her to New Haven?

(Objected to because the question assumes that the witness has testified to certain facts stated in the question.)

Ans. No; I was not present.

X Int. 14. Did you hear her ask her?

Ans. Mrs. Clark told me that she asked her. No; I did not hear Mrs. Clark ask Mrs. Platt to go.

X Int. 15. Have you actual knowledge that Mrs. Platt went to New Haven with Mrs. Clark?

Ans. I have proof of it.

X Int. 16. X Int. 15 repeated.

Ans. Yes.

X Int. 17. I understand you to say that you know of your own knowledge that Mrs. Platt went to New Haven with Mrs. Clark at this time. Did you see her go?

Ans. I did not see her go, but I have proof of her going.

X Int. 18. When you said you had actual knowledge did you or did you not, on reflection?

(Objected to as nonsense.)

Ans. I did.

X Int. 19. Did you see them on their way to New Haven?

Ans. No, sir.

X Int. 20. Did you see them on their way from New Haven?
Ans. Yes, sir.
X Int. 21. When was this?
Ans. I am not positive as to the date.
X Int. 22. State as near as you can.
62 Ans. I should judge it was four or five years ago.

Cross-examination closed.

G. HUBBELL.

Subscribed and sworn to before me this 17th day of June, A. D. 1889.

E. E. MARVIN,
U. S. Commissioner and Special Examiner.

Mr. GEORGE E. PLATT sworn, and examined by Mr. STODDARD:

Int. 1. What is your name, age, residence, and occupation?
Ans. My name is George E. Platt; age, 52; residence, Milford, Conn., and occupation, butcher.
Int. 2. Your wife's name is what?
Ans. Nellie C. Platt.
Int. 3. One of the defendants in this case?
Ans. She is.
Int. 4. Did you know the late Mrs. Irene Clark?
Ans. I did.
Int. 5. For how long?
Ans. Thirty or forty years, I guess; ever since I can remember.
Int. 6. State whether she was a relative of yours.
Ans. Nothing to me.
Int. 7. Or of your wife?
Ans. She was great aunt to my wife.
Int. 8. Did you ever see these three bank books in question, Mr. Platt?
Ans. I have.
Int. 9. Do you know the dates in the books when the first entries were made?
Ans. I do not. On looking at one of them which I see here I find it is October 15, 1884.
Int. 10. Did you see these books on that day?
Ans. I did.
Int. 11. I wish you would state, Mr. Platt, what you know about the transactions of that day. State when you first saw the books, in whose hands, and who was present.

63 (Objected to as incompetent on the ground that his wife is a party in interest, and that the question calls for the acts and declarations of a deceased party, and as contrary to the statutes of the United States in such cases.)

Ans. I saw them at my house. Mrs. Clark had the books, and Mrs. Clark, my wife, and myself were present. Mrs. Clark said she had something she wanted to show me. She took out these three

books and said she had given the girls—that is the way she worded it—$1,500 each, and showed me the books. I told her I thought she had done well. She said, That is not all I have done, either; I gave Nellie a sewing-machine. I started to go away and she called me back and said, There is something else I want to show you. She took out a bag of money; she took it out of her bosom or her clothes somewhere. Some of it was in gold and some of it was in bills. I said I thought she was foolish to keep so much money by her. She says, "Would you put it in the Milford Bank?" I said, "I would; I think they are as safe as any of them. I have got money there myself." She says, "Won't you put it in for me?" I says, "Yes." She counted me out $450 in bills; the gold she wanted to keep herself. I took the money and started to go, and I asked her if she had a book there, and she said, "No." I said, "In whose name shall I have it put in?" She said, "Mine," meaning herself. I says, "I know that, but is it Mrs. Bela Clark or Mrs. Irene Clark?" She said, "Mrs. Irene Clark." I turned to go and put the money in the bank, which I did, and brought the book back and gave it to her at my house. My house was forty or fifty rods distant from the bank. She took out two papers and said, There is two strips, and said, You tell Albertus Clark and have him tell Clifford to tell their wives that they have got to sign them, and they have got to be returned to the bank. Albertus Clark was the husband of Emma M. Clark, and Clifford Clark was the husband of Mary Belle Clark. That is all that I remember at that time.

(The answer is objected to by complainant's counsel as immaterial and irrelevant and as not pertinent or within any of the issues in this action.)

64 Int. 12. You have spoken of where she said she had given the girls $1,500 each and your wife a sewing-machine. In that connection did she say anything about a will?

(Objected to, as the will will speak for itself, and no parol evidence to give any color or change the effect of that will or change any of its provisions and the validity of it is not in issue in this case.)

Ans. She did; she said the girls shared equal in the will, as if she had not given them a penny.

Int. 13. Do you know whether your wife went to New Haven with Mrs. Clark that day or not?

Ans. She did.

Int. 14. State whether at this interview Mrs. Clark or your wife said anything about the signature book in the bank or these slips being put on it.

(Same objection.)

Ans. Mrs. Clark said these two slips had got to be signed and returned to the bank; Nellie had signed at the bank and there would be no slip for her to sign.

(The answer is objected to as irrelevant and immaterial.)

Int. 15. Have you seen the signature book at the bank during the time that we have been taking the evidence in this case?

Ans. I have.

Int. 16. In whose handwriting is the name Nellie C. Platt in that book?

Ans. Nellie C. Platt's; my wife's own handwriting.

Int. 17. You have testified that Mrs. Irene Clark asked you to notify Albertus Clark about this matter. Did you do so?

Ans. I did not.

Int. 18. Why not?

(Objected to as incompetent.)

Ans. Because my wife saw Mary Belle Clark and notified her, and I had no need to.

(Objected to as hearsay and irrelevant and immaterial.)

Int 19. Mr. Platt, you have now stated about seeing these
65 books on the 15th day of October, 1884. Did you see them again before Mrs. Clark's death?

Ans. I did.

Int. 20. In whose possession were these three books?

Ans. My wife's.

Int. 21. Did you have any conversation with Mrs. Irene Clark about these three books shortly before her death?

Ans. I did.

Int. 22. Where was this conversation?

Ans. At Mrs. Clark's house.

Int. 23. About how long before her death?

Ans. Three or four days before her death. I don't remember just the date.

Int. 24. Who went with you up to Mrs. Clark's house that day?

Ans. My wife.

Int. 25. State whether you or your wife took the books up with you.

Ans. I think I took them myself.

Int. 26. Now what was done with the books when you got there, and what was said?

Ans. I handed the books to Mrs. Clark, and said, "I have brought these books back, as you have sent for them." She said, "Yes, George, Bela has harassed me to death ever since he has found out they were gone." She looked at the books and says, "They are all right," and said, "Bela, you come here; I want you to see that they are all right." He was in the kitchen, smoking his pipe by the stove. She asked him the third time before he he came. He said, "I know they are all right if George had them." That was about all that was said at that time; he only came to the threshold; he did not come into the room at all while I was there. When I handed the books to her she said she had to do it to keep the peace while she lived, which would not be long. She said, "If anything should happen to me, you must be right on hand to get

these books and papers as soon as you can." That is all I remember now.

Int. 27. Did she say anything about her closets, or where these books and papers could be found?

Ans. She did. She pointed to the closets and told which
66 was hers and which was Bela's, and which one in which to find her books and papers. The one at the head of the bed was hers.

Int. 28. During the last sickness of Mrs. Irene Clark who took care of her?

Ans. Emma M. Clark, Mary Belle Clark, and my wife. Some one of them, or more, were there during all the time of her last sickness. I think Mrs. Captain Isbell was there two or three days. I don't know whether she staid nights or not.

Int. 29. Whose money paid for the medicines and food that she had during her last sickness?

(Objected to as irrelevant and immaterial and entirely without the issues in this case.)

Ans. Mrs. Irene Clark furnished the money. I don't know where she got it.

Int. 30. Did you have any conversation with Bela Clark during her last sickness about her cure?

(Same objection.)

Ans. I did.

Int. 31. What did he say about it?

Ans. I asked him if hadn't better have a nurse. It was a good deal trouble for the girls. He said, "No," she had given her money to the girls and they must take care of her, and that she had the best of care.

Int. 32. Did you hear Mr. Bela Clark's testimony on the part of the plaintiff in this case?

Ans. I did.

Int. 33. Did you hear his testimony, which was, in substance, that during his wife's last sickness he nursed and took care of his wife?

Ans. I did.

Int. 34. Is it true?

Ans. No, sir; it is not true.

Int. 35. Was Mrs. Irene Clark the first or second wife of Bela Clark?

Ans. Second.

Int. 36 Did Mrs. Irene Clark ever have any children?

Ans. No, sir; not that I know of.

67 Int. 37. Did Bela Clark have any children by a former marriage?

(Same objection.)

Ans. He did; two, I believe.

Int. 38. Can you give me their names?

(Same objection.)

Ans. I think one was Eliza and the other Marshall.

Int. 39. Did Mrs. Irene Clark ever tell you what became of that money that you deposited in the Milford Bank for her on that day you have spoken of?

(Same objection and as hearsay.)

Ans. She did.

Int. 40. Well?

(Same objection.)

Ans. She said she gave it to Marshall to take the mortgage off his house.

Int. 41. On this 15th day in October state whether your wife was present during the entire conversation between Mrs. Clark and yourself.

Ans. She was.

(Direct examination closed.)

Cross-examination by Mr. McMahon:

X Int. 42. Mr. Platt, how long did the last sickness of Mrs. Clark continue?

Ans. About three weeks.

X Int. 43. At the time you speak of your going up there with these books you said to her, "You have sent for these books." Who did she send to you for these books?

Ans. She did not send anybody to me. She sent to my wife.

X Int. 44. Who did she send to your wife for these books?

Ans. I could not tell you. My wife sent to me and said she had sent for these books, and she wanted me to go up with her and carry them; it was in the evening—the night time. I did so.

X Int. 45. What did you carry up that evening?

Ans. Those books.

68 X Int. 46. What books?

Ans. Bank books.

X Int. 47. What bank books?

Ans. All the bank books, I suppose. I never looked at them.

X Int. 48. Well, how many were there?

Ans. Seven, I think. I am not certain if they were all there.

X Int. 49. Well, don't you know how many were there and what they were?

Ans. Not for certain; but I suppose they were all there.

X Int. 50. Where did you get them from?

Ans. My wife gave them to me.

X Int. 51. Where did she get them?

Ans. I don't know where she got them. How do you suppose I know where she got them? I suppose she got them of Mrs. Clark.

X Int. 52. Is that all you have to say as to your knowledge of those bank books being at your house?

Ans. It is all I know about it.

X Int. 53. I understand, then, that all you know about the books being at your house was the matter of your wife's handing them to

you and informing you that Mrs. Clark had sent for them. Am I correct?

Ans. It is not correct, because I knew that my wife had them.

X Int. 54. How long had you known that she had them?

Ans. Well, it was quite awhile. I can't remember the dates.

X Int. 55. About how long?

Ans. I could not tell how long it was.

X Int. 56. State how long it was, as near as you can recollect.

Ans. I don't remember, and I cannot tell you what I don't know.

X Int. 57. You think there were seven bank books. Can you tell any or all the banks that issued them?

Ans. I cannot tell all of them. I don't know of but two—a Bridgeport saving's bank, I think (I am not positive about
69 that), and the Connecticut Bank of New Haven. I mean outside of the transfers.

X Int. 58. How were those books done up, if in any way, when you took them to carry them to Mrs. Clark that evening?

Ans. They were in an old work-bag, I believe.

X Int. 59. Whose was the work-bag.

Ans. I could not tell you.

X Int. 60. Were there any other papers, besides these seven bank-books or anything else, in the work-bag?

Ans. I don't know.

X Int. 61. Was it opened after you got up to Mrs. Clark's by any one?

Ans. Mrs. Clark opened it.

X Int. 62. Could you not see what the contents was when it was so opened?

Ans. I suppose I could if I had noticed, but I did not.

X Int. 63. Were you present when these books were brought to your house?

Ans. I don't think I was, but I don't know. I don't remember whether I was or not. I don't remember when they were brought and don't remember whether I was there or not.

X Int. 64. When these books were put away at Mrs. Clark's, in the closet, were they all put back in the same bag in which you carried them there?

Ans. I was not there when they were put away. I did not say they were ever put in the closet. She hung them on the bed post that night.

X Int. 65. You say she called to Bela Clark to come to the room, and that he came to the door; did she have the bag and books in her hands when he came to the door?

Ans. She had them laid on the bed in front of her. She had been looking at them and said they were all right and wanted him to see that they were all right. He said, "I know they are all right if George had them."

X Int. 66. Were the books and bag where Bela Clark could see them when he came to the door, as you have stated?

Ans. He could if he had been of a mind to. They were right in

front of him, but he did not offer to look at them while I was
70 there. He turned and went away after he had said "he knew they were all right if George had them." He seemed to do it satisfy her; that is all.

X Int. 67. Did he see those books on the bed?

Ans. I don't know whether he did or not; how do I know? He could if he had been a mind to.

X Int. 68. Did you and your wife go home together that evening?

Ans. I could not say whether we did or not. It is my impression that my wife stayed; I could not be positive.

X Int. 69. Where were these books when you left for home?

Ans. I think Mrs. Clark had put them under her pillow or hung them on the bed post; I am not certain which. I think she put them under her pillow.

X Int. 70. Was it not in the early part of this illness that these books were taken to your house?

Ans. I don't know; for I don't know anything about it, as I have told you once or twice.

GEO. E. PLATT.

Subscribed and sworn to before me this 17th day of June, A. D. 1889.

E. E. MARVIN,
U. S. Commissioner and Special Examiner.

Adjourned to June 24, 1889, 10 a. m.

MILFORD, *June* 24, 1889.

Taking of defendants' testimony continued. Parties represented as heretofore.

Mrs. GEORGE PLATT sworn, and examined by Mr. STODDARD:

Int. 1. What is your name, age, and residence?

Ans. Nellie C. Platt; forty years old, and I reside in Milford.

Int. 2. Was you in New Haven, in the Connecticut Savings Bank, on the 15th of October, 1884?

Ans. I was.

Int. 3. Who, if any one, was with you on that day?

Ans. Mrs. Irene Clark.

71 Int. 4. State whether or not you signed a book in the bank, called a signature book, on that day.

Ans. I did.

Int. 5. Are you acquainted with Mrs. Clifford Clark?

Ans. I am; she is my first cousin.

Int. 6. What is her given name?

Ans. Mary Belle.

Int. 7. Did you see her immediately after this 15th day of October, 1884; and, if so, where?

Ans. I saw her the following Sunday, at church.

Int. 8. If you said anything to her about these bank books please state it.

(Objected to as irrelevant, immaterial, and incompetent.)

Ans. I told her I had been to New Haven with Mrs. Irene Clark and she had given each of us girls a bank book, $1,500 each, and I had signed my name on the big book at the bank the day she gave them. She wanted to see them, to have them go and sign their names. She had got two slips of paper for them to sign their names to take to the bank.

(Complainant's counsel objects to the answer as hearsay, and because it is testimony in which one of the parties is trying to testify in her own behalf against the other party, directly and indirectly, as to statements and transactions with the testator, and as coming within and prohibited by section 858 of the Revised Statutes of the United States.

Also for the further objection that it calls for the declarations of a deceased party as to statements made and transactions had with the decedent by a party in interest, claiming a portion of the decedent's estate, and as calling for the witness' acts as to transferring these statements to other interested parties and contrary to the statutes above referred to, which is as follows:

"In the courts of the United States no witness can be excluded in any civil action because he is a party to or interested in the issue tried.

"Provided, that in actions by and against executors, ad-
72 ministrators, or guardians in which judgment may be rendered for or against them, neither party shall — as to any transaction with or statement by the testator, intestate, or ward unless called to testify thereto by the opposite party or required to testify thereto by the court.")

Int. 9. Do you remember anything else that was said at that time?

(Same objection.)

Ans. Only that she, Mrs. Clark, wanted her to go and sign the slip.

Int. 10. State whether you said anything about Mrs. Albertus N. Clark at this interview.

(Same objection.)

Ans. I told her to tell Emma that Mrs. Irene Clark wanted to see her.

ELLEN C. PLATT.

Subscribed and sworn to before me this 24th day of June, A. D. 1889.

E. E. MARVIN,
U. S. Commissioner and Special Examiner.

Mrs. CLIFFORD CLARK sworn, and examined by Mr. STODDARD:

Int. 1. What is your name, age, and residence?

Ans. Mary Belle Clark; residence, Orange; age, 31.

Int. 2. If you had any conversation with Mrs. Nellie Platt concerning the bank book in suit, will you state where and when it was and what she said to you?

(Objected to as irrelevant and immaterial and as calling for hearsay and for the same grounds stated on the record to the evidence of Mrs. Platt.)

Ans. I saw Mrs. Nellie Platt at church in Milford. It was in October, 1884, I think. She said my aunt Irene had been to New Haven and had given each of us three girls a bank book of $1,500, and wanted Mrs. Albertus Clark and myself to come down to her house to sign some papers that were to be returned to the bank.

73 (Complainant's counsel objects to the answer, as this testimony purports to be the declarations of a deceased party made to a party in interest and as contrary to the statutes before referred to and as coming from a party in interest not made to her, but told to her by another party in interest, and as hearsay. These and the previous objections are made without further repetition in detail against all testimony offered or to be offered in this line of testimony.)

Int. 3. I will ask you whether you told Mrs. Albertus Clark what Mrs. Platt had said to you.

(Same objections as to previous question and answer, the witness being a party in interest.)

Ans. I did.

Int. 4. I will ask you if you ever saw these little slips of paper spoken of; and, if so, where?

(Same objection as to last question and answer.)

Ans. I saw my own and signed it at my home.

Int. 5. Who had it when you first saw it?

(Same objections.)

Ans. Mr. Albertus Clark gave it to me.

Int. 6. And what did you do with it after signing it?

Ans. I signed it and gave it back to him.

Int. 7. Have you ever seen your signature that you put upon that paper; and, if so, where?

(Same objections.)

Ans. I have. I saw it on a little slip of paper pasted on a large book in the Connecticut Savings Bank, at New Haven.

Int. 8. How long was it after your interview with Mrs. Nellie C. Platt before you signed that paper?

(Same objection.)

Ans. I think I signed it the next day, in the evening.

MARY BELLE CLARK.

74 Subscribed and sworn to before me this 24th day of June, 1889.

E. E. MARVIN,
U. S. Commissioner and Special Examiner.

Mrs. ALBERTUS CLARK sworn, and examined by Mr. STODDARD:

Int. 1. What is your name, age, and residence?

Ans. My name is Emma M. Clark; age, 43; residence, Orange.

Int. 2. State whether Mrs. Mary Belle Clark said anything to you about these bank books; and, if so, where it was, and what she said.

(Complainant's solicitors make same objection to this whole line of testimony as heretofore, the witness being also a party in interest.)

Ans. She did, at my own house. She said that Mrs. Nellie Platt told her, that Aunt Irene Clark had given each of us a bank book of $1,500, and wanted us to come down to her house and get some slips on which to sign our names to be returned to the bank.

Int. 3. Did you see those slips?

(Same objection.)

Ans. I did.

Int. 4. And did you sign one of them?

Ans. I did.

Int. 5. Where was you when you signed it?

Ans. At the bank, the Connecticut Savings Bank, New Haven.

Int. 6. And who was with you, if any one?

Ans. My husband.

Int. 7. Do you know whether anything was done at the same time with the slip that Mary Belle Clark had signed?

Ans. I do; it was pasted in the signature book with my own. My husband took it over; took them both over.

Int. 8. Can you tell me about what time it was that you returned these slips to the bank?

75 Ans. It was in less than a week, and I think the day following that we received the message from her; it was October, 1884.

EMMA M. CLARK.

Subscribed and sworn to before me this 24th day of June, A. D. 1889.

E. E. MARVIN,
U. S. Commissioner and Special Examiner.

And at the term of said court held at Hartford on the third Tuesday of September, 1889, the complainant, by James H. McMahon and J. M. Buckingham, Esqrs., her attorneys, duly appeared to prosecute said suit, and the defendants, by Wm. L. Burnett and Wm. B. Stoddard, Esqrs., their attorneys, also appeared, and said cause was fully heard; and on the 5th day of October, 1889, the court filed its opinion in the words and figures following, viz:

76 Circuit Court of the United States for the District of Connecticut.

MARTHA A. MILLER
vs.
EMMA J. CLARK, ALBERTUS N. CLARK, Executor, and Others.

SHIPMAN, *J.:*

This is a bill in equity by one of the residuary legatees under the will of Irene Clark, deceased, to compel three of the defendants to deliver to the executor of said will three savings bank books alleged to be in their possession and to compel the executor to receive said books, to inventory the deposits named therein as a part of the assets of said estate, and to collect the amount due thereon for the benefit of said estate.

Mrs. Irene Clark, of Milford, Connecticut, died in April, 1887, leaving a last will, which was executed in November, 1881, by which, after a specific legacy to her husband, she gave all the rest of her personal estate to six nieces and grandnieces, Irene M. and Martha A. Buckingham, Emma J. and Mary Bell Clark, Ellen C. Platt, and Rosalie Merwin, to be equally divided between said persons, and appointed Albertus N. Clark, the husband of said Emma J., her executor. At the time of her death she was from 76 to 78 years old, without children, the second wife of Bela Clark, to whom she was married late in life. Her living relatives were a sister and a brother, divers nephews and grand-nephews, nieces and grand-nieces. Her personal property, besides a small amount of household goods and wearing apparel, amounted to $7,509.83, mostly consisting of deposits in savings banks.

77 On October 15th, 1884, she had $5,871 on deposit in the Connecticut Savings Bank of New Haven. In pursuance of a previously expressed intention she went to said bank on said day, accompanied by Mrs. Nellie C. Platt, gave the teller her bank book to be written up, and directed that $1,500 should be transferred from her account to each one of the three defendants, Nellie C. Platt, Emma M. Clark, and Mary Bell Clark. This was done, and three new accounts were opened in the names of said three persons, whereby each was credited with $1,500, and Mrs. Irene Clark's account was correspondingly reduced $4,500. Three new pass books were made out in the names of said three new depositors and were given to Mrs. Irene Clark. She told the teller that she wanted to have the bank books so fixed or the entries so made that the money should belong to the persons named, but so fixed that they could not draw it and spend it during her life. The teller thereupon entered upon the pass books the words "Only Mrs. Irene Clark has power to draw." The ledger accounts were in the names of said three persons.

The said bank has a "signature book," so called, in which are entered the signatures of each depositor and, when trust accounts are opened, the signatures of the trustee and of the *cestui que trust.* Other facts in regard to the depositor or the *cestui que trust.* are also

entered in this book for the purpose of identification. Mrs. Irene Clark on this day wrote her name in the signature book, to which the teller added, in writing, the word trustee, but it did not clearly appear when the word was written. Mrs. Platt wrote her name in the book opposite the number of her pass book, and the two signatures were included in a bracket. The words "Mrs. Clark only to draw" were also written in the margin by the teller. Blank slips for the two other donees to sign and upon which to state the required facts were given to Mrs.
78 Clark. Upon her return to Milford on that day she showed the husband of Mrs. Platt the three bank books; said she had given the girls $1,500 each; showed the two slips, and instructed him to have the two other nieces informed that their aunt had given to each a bank book of $1,500, and that she wanted them to come to her house and get some slips to sign and return to the bank. The slips were obtained, signed, and returned to the bank, and the portions containing the signatures of the *cestuis que trust.* were pasted in the signature book opposite the respective numbers of the books. The other facts were entered by the teller and some other clerk. After the signatures were pasted in the book, but how long after did not appear, the teller also wrote the words "Mrs. Irene Clark, trustee," below each signature and the words "Mrs. Clark only to draw" in the margin. The bank books were retained by Mrs. Irene Clark until a short time before her death, when all the seven bank books in which she was interested were intrusted by her to Mrs. Platt for some purpose not known, and were, at the request of Mrs. Clark, returned to her three or four days before her death. This request to return was manifestly to satisfy and quiet her husband. Nothing has ever been drawn upon the three books in controversy, either as principal or interest. Other testimony in regard to the executed purpose of Mrs. Irene Clark to give the three deposits of $1,500 each to the said three persons, as declared by her after her return from New Haven and before the acceptance of the gifts by the absent nieces, and also about the time of and either before or soon after said acceptance was given. Her executed and completed intention to give said deposits to the three donees, the actual gift, its consummation by an acceptance on their part, and her express declaration of trusteeship during her life of the said moneys for
79 the benefit of the named persons were clearly proved. Her purpose to give the several sums so that the funds should belong to said parties and to create a trusteeship thereof in herself during her life was plainly declared and, so far as appears, at the request of Mrs. Irene Clark only, attempted to be carried out by the teller in accordance with her wishes by the entries which he made upon the books of the bank and the pass books.

The facts bring the case within any rule which has been laid down in regard to the validity of gifts *inter vivos*. The courts of last resort in Massachusetts and in New York differ from each other in regard to the absolute necessity of an acceptance of the gift by the donee. (Gerrish *v.* New Bedford, 128 Mass., 159; Martin *v.* Funk, 75 N. Y., 134.) But there can be no doubt that the donees in this case knew of and

accepted the gifts. The authorities unitedly declare that the gift may be made by delivery to the donee or by the creation of a trust in a third person or in the donor, and that where there is an express declaration of trust in the donor the rule which requires cessation of control and dominion by the donor over the personal property which is given is not applicable. (Milroy *v.* Lord, 4 De G., F. & J., 264; Young *v.* Young, 80 N. Y., 422; Scott *v.* Berkshire Savings Bank, 140 Mass., 157; Minor *v.* Rogers, 40 Conn., 512; Boone *v.* Citizens' Savings Bank, 84 N. Y., 83.)

Testimony in regard to the declarations and acts of the donor which were made or which took place before or about the time of the acceptance of the gifts and which declared her purpose in transferring the deposits to the donees was objected to. This species of testimony is wont to be admitted in this class of cases for the purpose of showing the intention of Mrs. Clark in making the transfer and holding the books and of showing the character of said acts.
80 (Scott *v.* Berkshire Savings Bank, *supra.*) These statements, being also against the interest of Mrs. Clark and tending to prove the fact of the gift, are admissible. By the statute of Connecticut in actions by or against the representatives of a deceased person the entries, memoranda, and declarations of the deceased relevant to the matter in issue may be received as evidence. No testimony was given by any of the parties to the suit in regard to the acts or declarations of the donor.

The complainant makes the point that in case those transfers were gifts they were in partial ademption or satisfaction of the residuary bequests under the will. Without stopping to consider the question whether the principle of the ademption of a general or specific legacy is applicable to the case of these residuary legatees, it is sufficient to say that the testimony proves the existence of an intent on the part of the testatrix that the gifts were to have no reference to the testamentary disposition of her property.

Let the bill be dismissed.

JAMES H. McMAHON AND
J. M. BUCKINGHAM,
For the Complainant.
WM. M. BENNETT AND
WM. B. STODDARD,
For the Defendants.

And on the 19th day of October, 1889, the following final decree was made and entered in said cause, viz:

81 Circuit Court of the United States, District of Connecticut.

MARTHA A. MILLER, of Des Moines, Iowa,
vs.
EMMA J. CLARK, MARY BELLE CLARK, Both of Orange, Connecticut; Ellen C. Platt, of Milford, Connecticut; Albertus N. Clark, of Orange, Connecticut, Executor of the Last Will and Testament of Irene Clark, Deceased.

No. 619. In Equity.

Decree.

This cause having come on to be heard upon the bill of complaint, answer, and replication and upon the proofs taken and filed in said cause, and having been argued by counsel for the respective parties—

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed, and the court does hereby order, adjudge, and decree, that the complainant's said bill of complaint be, and the same hereby is, dismissed with costs to the defendants, taxed at the sum of $125.16.

N. SHIPMAN,
District Judge.

I, Edwin E. Marvin, clerk of the circuit court of the United States of America in and for the district of Connecticut, do certify that the foregoing is a true copy of the original bill of complaint, demurrer, answer, replication, pleadings, proceedings, evidence, opinions, and decree remaining of record and on file in the case of Martha A. Miller *vs.* Emma J. Clark *et als.* in said court.

In testimony whereof I have hereunto set my hand and the seal of said court, at Hartford, in said district, this 26th day of July, 1890.

E. E. MARVIN, *Clerk.*

Endorsed on cover: Connecticut C. C. U. S. No. 1366. Martha A. Miller, appellant, *vs.* Emma J. Clark, Mary Bell Clark, Albertus N. Clark, executor of Irene Clark, deceased, and Ellen C. Platt. Filed October 9, 1890.

Supreme Court of the United States,

OCTOBER TERM, 1890.

MARTHA A. MILLER, *Appellant*,
vs.
EMMA J. CLARK, *et als.*, *Appellees*.

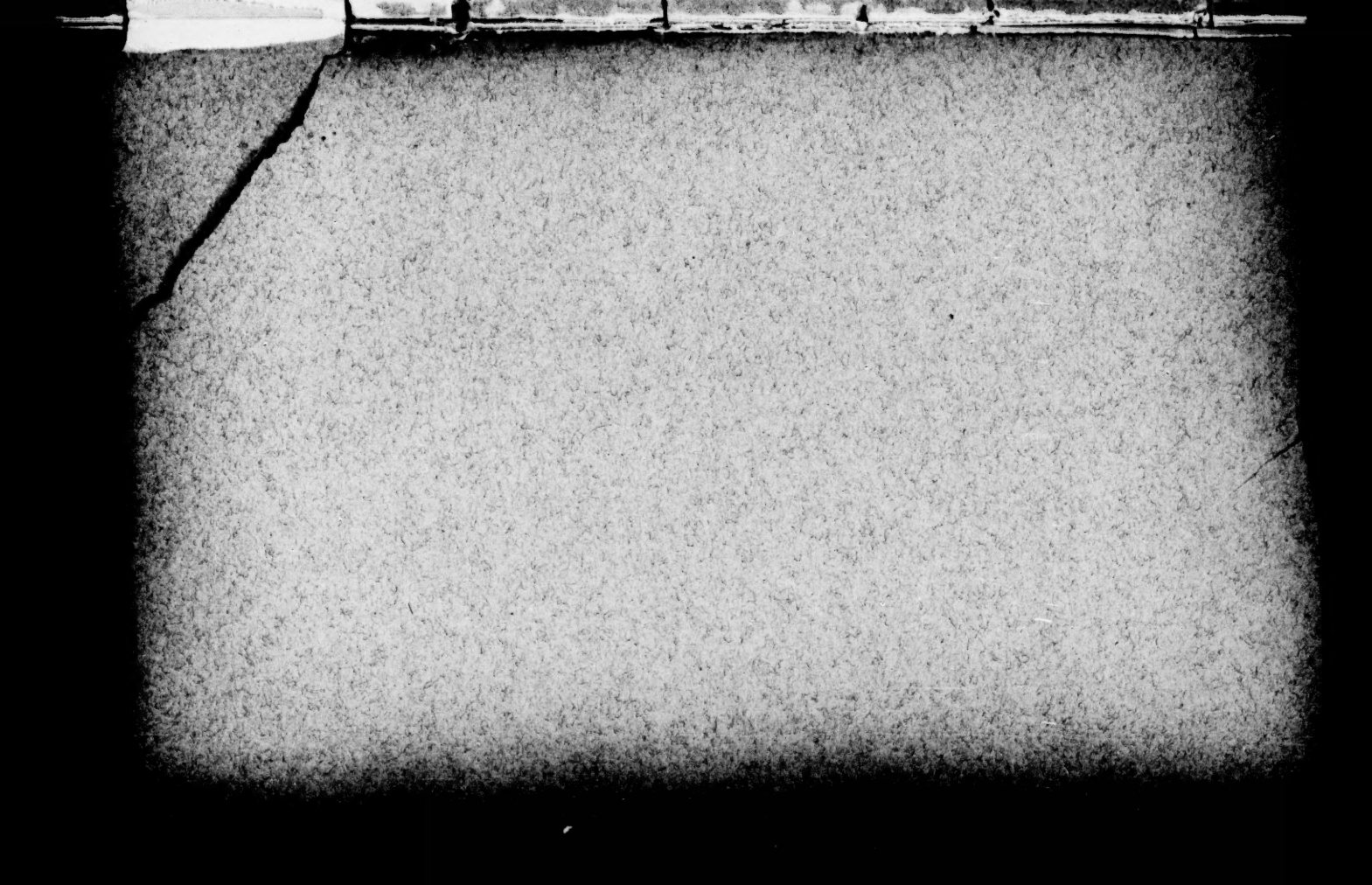
No. 1,366.

Plaintiff's Appeal from the Circuit Court for the District of Connecticut.

Appellant's Brief, on Motions to Dismiss and Affirm.

Submitted January 19, 1891.

J. M. BUCKINGHAM,
SIMEON E. BALDWIN,
Of Counsel.



Hoggson & Robinson, Law Printers, New Haven.

Supreme Court of the United States,

OCTOBER TERM, 1890.

MARTHA A. MILLER, *Appellant*,
vs.
EMMA J. CLARK, *et als.*, *Appellees*.

No. 1,366.

Plaintiff's Appeal from the Circuit Court for the District of Connecticut.

Appellant's Brief, on Motions to Dismiss and Affirm.

Submitted January 19, 1891.

STATEMENT.

The appellant brought her bill in equity in the Circuit Court, as a residuary legatee under the will of Irene Clark. There were six residuary legatees among whom the estate was to be equally divided. The appellant was one of the six; three of the defendants Mrs. E. J. Clark, Mrs. M. B. Clark, and Mrs. Platt, were also of the number, and the fourth defendant Albertus N. Clark was

the husband of one of the others, and the executor of the will.

The bill alleged (p. 8) that the testatrix "left as part of her estate the following described property and money deposited in the Connecticut Savings Bank of New Haven, Connecticut, to wit, the sum of forty-five hundred dollars and accrued interest, which belonged to her estate; that said sum so deposited was evidenced by three bank books," each for $1,500 and interest, one of which was in the name of Mrs. Platt, one in the name of Mrs. M. B. Clark, and one in the name of Mrs. E. J. Clark; that these books were in the possession and control of the testatrix, at the time of her death, and came into the executor's possession "who was rightfully entitled to the possession of said books, and to the deposits of money represented above;" that he has wilfully and wrongfully parted or is intending to part with the possession of the books to his co-defendants, and that they have them now wrongfully in their possession; that the executor wrongfully refuses to inventory these deposits or assets of the estate; and that they are wrongfully withheld from the estate.

The prayer is that Mrs. E. J. Clark, M. B. Clark, and Mrs. Platt, deliver to the executor the books in their possession, and that he be ordered to accept and receive them, and the moneys so deposited, and to amend his inventory accordingly, and dispose of the fund as part of the estate; and for general relief.

The defendants united in a joint and several answer, denying (p. 14) that the testatrix left "said sum of forty-five hundred dollars and accrued interest, and that the same belonged to her estate;" admitting that such sum was on deposit in the Savings Bank," evidenced by three bank books," and "that said bank books were in the possession and custody of the said Irene Clark, at the time of her death, and that the same came into the possession of the said Albertus N. Clark;" denying that he received them as executor, or that Irene Clark at the time of her decease had any right to their possession or control; denying that he had delivered them to his co-defendants, and averring that he still held them in his own possession (p. 15); denying "that the sum of forty-five hundred dollars is wrongfully withheld from said estate," (p. 16), but saying "that the same is **rightfully held and possessed by the said Albertus N. Clark for and in behalf of the said Ellen C. Platt, Mary Bell Clark, and Emma J. Clark,** defendants, as hereinbefore set out."

In brief, the bill alleged that a fund, originally of $4,500, which, with interest accrued, amounted to over $5,000, was the property of the testatrix and was in the hands of the defendant, A. N. Clark as her executor, for the benefit of her estate, of which the plaintiff, the other defendants, and two third parties were residuary legatees, but that he had surrendered it or was about to surrender it to his co-defendants, in violation of his trust; and the

answer alleged that he held it (or the evidences of it) still in his possession, though not as executor, but for and in behalf of his co-defendants.

The fund, as we alleged, was one deposit of $4,500, and interest, evidenced by three bank books, which the executor, who held it, was bound to inventory and account for, as part of the estate.

The object of the suit was to compel him to hold and deal with this fund, as executor.

The Court below dismissed the bill on the pleadings and proofs, holding that the money represented by each bank book belonged to the defendant in whose name the book was taken out. It is agreed that each book represented over $1,790 (see Appellee's Motion, p. 4) the whole fund in controversy being thus over $5,300.

POINTS ON MOTION TO DISMISS.

I.

It begs the question in dispute.

The appellant (being the plaintiff below) sued to establish the title of the estate to a fund of over $5,300. Her interest was as one of six residuary legatees. Her contention was and is that it was one fund, belonging to Irene Clark's estate, though evidenced by three books in the names of three other of the residuary legatees.

The appellees contend that each book represents a distinct fund, and that none of them belonged to the estate.

The Court below took their view, and we have appealed to this Court to sustain ours. It is a *petitio principii* for the appellees now to say that because the Court below has decided that there were three funds, therefore there are three, no one of which amount to over $5,000. This is the very thing we came here to discuss, upon the hearing on the merits.

If the plaintiff is suing for three separate demands, why did not the appellees move to erase the cause in the Court below, on the ground that less than $2,000 was involved?

II.

The decree settles the right of the estate as to the whole fund, as an entirety.

The decree appealed from was that the bill be "dismissed with costs to the defendants," (p. 61). Unless reversed, it is fatal to the interest of the estate in the entire fund. The appellees suggest that the decree might have been in favor of one of them, and against the rest, and that in that case, not $5,000 would have been involved.

Any judgment, as respects the executor, must have disposed of the entire fund. If it should give the estate less than the whole fund, it would give it less than is claimed, and it is the plaintiff's claim that measures for

the plaintiff the amount in dispute upon the judgment. The measure for the defendants, in case of an adverse judgment, is the judgment; but that for the plaintiff is his whole claim, even though he may get an allowance of something upon it.

Knapp vs. *Banks*, 2 How., 73.

Nor is it material that the plaintiff's share in the fund she claimed for the estate would be less than $5000. The suit is for the benefit of the whole estate, claiming under one title, from the testatrix.

Shields vs. *Thomas*, 17 How., 3.

The executor was confessedly in possession of the fund without any personal interest in it, except possibly as husband of one of the co-defendants. It was proper to join with him the co-defendants claiming a beneficial interest, as parties, but the real controversy was with him, as trustee of the fund, and threatening to give it away, in breach, as we claimed, of his trust, as executor. If the fund belongs to the estate, it is of no consequence to him how it is to be divided. That is settled by the will the one source of title for all.

Freeman vs. *Dawson*, 110 U. S., 264.

Indeed the appellees' answer, as quoted on page 3 of this brief, is that the defendent Albertus N. Clark, holds

the whole fund of $4500, and interest accrued, for and in behalf of the three other defendants, and not as executor. Their rights and his are deduced from one act of the testatrix, and inseparably connected with each other. They say he is holding for them: We say he is holding for the estate.

"In all the cases where we have held that several sums decreed in favor of or against different persons could not be united to give us jurisdiction on appeal, it will be found that the matters in dispute were entirely separate and distinct, and were joined in one suit for convenience, and to save expense."

The Connemara, 103 U. S., 754.

In this bill, no separate decree is asked against any defendant. Relief is sought against the three claimants of the bank-books jointly, the prayer being for "a decree compelling said defendants, Emma J. Clark, Mary Bell Clark, and Ellen C. Platt, to turn over and deliver to said Albertus N. Clark, Executor, the bank-books now in their possession, and that said Albertus N. Clark, Executor, be ordered to accept and receive said books, and the money deposited in said Connecticut Savings Bank, and to include said sum of forty-five hundred dollars and accrued interest, as assets of the estate, &c., &c., (p. 9).

The main remedy invoked is to compel the executor to hold or get in the fund, as part of the estate, and incidentally it is prayed that in case the co-defendants have

already got the bank books away from him, they shall be compelled to return them. The entire fund is at stake in this suit. It involves the "ownership and control" of the executor over a deposit of $5,300, and will settle it finally, one way or the other.

Kenaday vs. *Edwards*, 134 U. S., 117, 123.

The appellant had no title to the fund or to the books, except as her equities might be worked out through the executor. The appellees are therefore wholly in error in claiming in their brief (p. 11) that the plaintiff's claim against the executor "is based entirely upon her right against each of the defendants." She claimed that a fund of over $5000, belongs to him as executor, and charged that he, wrongfully, had transferred, or was about to transfer, the evidences of title to his co-defendants. Against them her claim was a secondary one, that they deliver up these evidences to the executor.

She does (contrary to what the appellees say on p. 11 of their brief) ask a decree (Record, p. 9) that the executor should inventory and account for the whole fund, without first obtaining a decree that it belongs to the estate. She is simply trying to compel him to do his duty, and his whole duty, as executor, to the estate.

POINTS ON MOTION TO AFFIRM.

The rule (Rule 6) allowing the joinder of a motion to affirm with one to dismiss, applies only where it is "man-

ifest" that the appeal is merely dilatory or frivolous. It was not intended to cut a plaintiff in error or appellant off from the opportunity for an oral argument, in the ordinary way, unless he is manifestly abusing his legal remedies.

That our appeal was not taken for delay is obvious from the character of the proceeding. There is nothing sought in the nature of a *supersedeas*. To continue the litigation, if we do not succeed on the appeal, besides the direct expense to us, also reduces the fund of which we are one of the residuary legatees. We have, therefore, no motive for an appeal, but the expectation of success in reversing the decree below, and thus increasing the residuary estate.

We trust we may convince the Court, at the proper time, when the case is reached for argument, that the merits of the cause are with us. Meanwhile we simply suggest the following considerations.

I.

The gift was incomplete and testamentary.

It is admitted that Irene Clark, the testatrix, owned the fund in suit on Oct. 15, 1884; that on that day she had $1,500. of it transferred on the Savings Bank books to the name of Mrs. Platt, $1,500 more to the name of Mrs. M. B. Clark, and $1,500 more to the name of Mrs. E. J.

Clark, and a new pass-book made out for each of these deposits, headed thus: "*only Mrs. Irene Clark has power to draw,*" (Record, p. 4); that on the signature book of the Bank, similar entries were made of "only Mrs. Irene Clark to draw," and her own name was added to that of each of the others, thus: "Mrs. Irene Clark (trustee)" (p. 5); that the testatrix had made her will four years before (p. 7) leaving half of her residuary estate to the three ladies, who are defendants; that she took the new bank-books herself, and kept them till her death in 1887; and that thereupon they were taken possession of by her executor, the defendant, Albertus N. Clark, who holds them still, (Record, p. 15).

On these conceded facts, we submit that the title to the fund is in the executor. That the testatrix was rightfully in possession of the bank-books, at the time of her decease, the appellees admit in their brief (p. 17), though they denied it in their answer (Record, p. 15). "She was the trustee," they say (Brief, p. 17) "and, as such, was entitled to their possession." We add that she was also, both because named as trustee, and because she had provided in the transfers, that she only had power to draw, legally entitled to the money which the books represented. Was she not also beneficially entitled to it? She certainly was, unless she had made a valid gift, accompanied by a present delivery, or its equivalent.

But here was no present delivery, either of the money, on deposit, or of the right to it, or the evidence of it.

So long as only she had power to draw, only she had power to use, when drawn.

It is sought by parol evidence to limit this power to draw, to a personal power to be exercised only during her life, or as the appellees' brief puts it, so "that the money should belong to the persons named, but that they could not draw it, or spend it, during her life." (Brief, p. 14).

Such evidence of a person's intentions, given after his death, is always dangerous, and of little weight as against written entries to which he was a party. But, if it is allowed to control the bank entries, it shows an intent of the testatrix to retain the control of the fund during her life, and to vest it in the three nominees (if not previously disposed of by her,) upon her decease. (Record, p. 26.) They were to have it, not presently, but "eventually." (Record, p. 25, White's evidence X-Q. 53.)

This is a testamentary deposition, but invalid because not in testamentary form, and would have been invalid even if the bank-books had been delivered to the intended donees.

"A delivery in terms, which confers upon the donee power to control the fund only after the death of the donor, where by the instrument itself it is presently payable, is testamentary in character and not good as a gift.

Basket vs. *Hassell*, 107 U. S., 602, 610, 614.

But there was no delivery of the bank-books to the in-

tended donees, and this is fatal to their claim. This was a gift *inter vivos*, if anything, and such delivery was essential to complete it as the nature of the thing given admitted of.

"As there can be no manual delivery of the credit which the donor has in the bank, the delivery of the book, which represents the deposit and is the only evidence in the possession of the donor of his contract with the bank, together with an order or assignment, operates as a complete transfer of the existing fund, and is all the delivery of which the subject is capable."

Pierce vs. *Boston Savings Bank*, 129 Mass., 430.

The transfers to the names of the donees on the bank ledger, and pass-books, are explained and controlled by the additions of "Irene Clark (trustee);" and "only Irene Clark has power to draw."

Dougherty vs. *Moore*, 70 Md.: 18 Atlantic Rep., 35.

Her name was entered as trustee in the ordinary way in which trust accounts were kept at the bank, (Record, p. 28, White's Evidence, Int. 10–12), but the provision that only she had power to draw, was unusual and significant.

No written assignment of a chose in action undelivered, affects the title.

Hough vs. *Bailey*, 32 Conn., 288, 290.

No deposit in the donor's name as trustee for another, though coupled with a declaration to the donee that he has done so, passes title, if the owner meant to retain control of the fund during his life.

Nutt vs. *Morse*, 142 Mass., 1.

This differentiates the present case entirely from that so much relied on by the Court below, and the appellees, *Minor* vs. *Rogers*, 40 Conn., 518. The opinion in that case also was approved by a bare majority of the then Court, and the following language in the most recent decision on this subject is much more instructive as indicating the law of the State as to gifts claimed to be of a testamentary nature,—a claim of which the opinion of Judge Shipman in the Court below takes no notice.

"The fact that a part of the deposits were made in the plaintiff's name affords the strongest evidence of an intention to make a gift; but that does not necessarily show an intention to make a present gift: it is equally consistent with an intention to have the gift take effect at some future time."

Burton vs. *Bridgeport Savings Bank*, 52 Conn., 398, 402.

Mrs. Clark seems to have undertaken to make a future gift of a fund payable presently, retaining her hold upon it until her death. She could do this by a will, attested by three witnesses, but by nothing less.

II.

The admission of Mrs. Clark's subsequent declarations.

We do not deem it necessary to argue our other grounds of appeal; simply remarking that in receiving the evidence of the declarations of the testatrix, as narrated by one defendant to another, (Record, p. 55, Int. 8), the object of U. S. Rev. Stat., Sec. 858 seems to have been quite as effectually frustrated, as if such declarations had been testified to at first hand.

III.

The case one where strict proof was required to sustain the gift.

Courts look with little favor on attempts to bolster up imperfect gifts by parol evidence, and in the last case on this subject in Connecticut, the following is laid down as a rule of decision:

"The law will recognize and enforce gifts where they are clearly established, if creditors are not thereby prejudiced; but claims of this character are so open to fraud, and so liable to be made, especially against the estates of deceased persons, when there is little foundation for them, that courts will not regard them with favor, and will not sustain them unless fully proved: in other words, there is no presumption in their favor."

Burton vs. *Bridgeport Savings Bank*, 52 Conn., 403.

Both the motions of the appellees should therefore be denied, and the case stand for hearing in ordinary course.

J. M. BUCKINGHAM,
SIMEON E. BALDWIN, } *of Counsel.*

Supreme Court of the United States,

OCTOBER TERM, 1890,

No. 1366.

MARTHA A. MILLER, *Appellant*,

vs.

EMMA J. CLARK, MARY BELL CLARK, ALBERTUS N. CLARK, EXECUTOR OF IRENE CLARK, DECEASED, AND ELLEN C. PLATT, *Appellees*.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

Motion to Dismiss the Appeal and to Affirm, under Rule 6.

APPELLEES' BRIEF.

WILLIAM B. STODDARD,

Counsel for Appellees.

Hoggson & Robinson, Law Printers, New Haven.

Supreme Court of the United States,

OCTOBER TERM, 1890,

No. 1366.

MARTHA A. MILLER, *Appellant*,

vs.

EMMA J. CLARK, MARY BELL CLARK, ALBERTUS N. CLARK, EXECUTOR OF IRENE CLARK, DECEASED, AND ELLEN C. PLATT, *Appellees*.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

Motion to Dismiss the Appeal and to Affirm, under Rule 6.

APPELLEES' BRIEF.

STATEMENT OF THE CASE.

It appears from the complainant's bill, p. 7 of record, that Irene Clark, late of Milford, died on the 14th day of April, 1887, leaving a will in which the defendant, Albertus

N. Clark, was named as executor, and afterwards qualified as such; and on p. 8, that said Irene Clark had on deposit in the Connecticut Savings Bank of New Haven $4,500, and accrued interest, which deposit "was evidenced by three bank books, one of which was in the name of Ellen C. Platt, one in the name of Mary Bell Clark, and the other in the name of Emma J. Clark, each of which books represented the deposit of the sum of fifteen hundred dollars and accrued interest."

The prayer, (Record, p. 9), is "for judgment and a decree compelling said defendants, Emma J. Clark, Mary Bell Clark, and Ellen C. Platt, to turn over and deliver to said Albertus N. Clark, executor, the bank books now in their possession, and that said Albertus N. Clark, executor, be ordered to accept and receive said books and the money deposited in said Connecticut Savings Bank, and to include this said sum of forty-five hundred dollars, and accrued interest, as assets of the estate of said Irene Clark, deceased, and amend his inventory so as to include the same," etc., "and that each of said defendants named as parties to this bill be required to appear and answer the averments hereof, and to declare their interest, if any, in and to said property and money."

The defendant's answer (Record, p. 15) is

"These defendants, further answering the said bill of complaint, say that they have been informed and believe it to be true, and therefore aver, that at the time of the decease of the said Irene Clark, the said bank book in the

name of the said defendant, Ellen C. Platt, and the money deposited in the said Connecticut Savings Bank, evidenced thereby, were, and that the same ever since have been, and still are, the *absolute property of her, the said Ellen C. Platt*, and that the said bank book in the name of the said defendant, Mary Bell Clark, and the money deposited in the said Savings Bank, and evidenced thereby, were, and the same are, the *absolute property of her, the said Mary Bell Clark*, and that the said bank book in the name of the said defendant, Emma J. Clark, and the money deposited in the said Savings Bank, and evidenced thereby, were, and still are, the *absolute property of her, the said Emma J. Clark*."

These were the issues presented by the pleadings.

The testimony of the complainant's witness, Mr. White, (Record, pp. 21 and 22), shows that on or about October 15, 1884, the said Irene Clark, who was a depositor in said bank, called at the bank, had her book, No. 48864½, written up, and the following charges made in said book:

1884.

October 15,	By transfer to 23,109,	$1,500.00
" " "	" 23,110,	1,500.00
" " "	" 23,111,	1,500.00

These pass books were made out,

one in the name of	Nellie C. Platt,	No. 23,109.
" " "	Emma J. Clark,	No. 23,110.
" " "	Mary Bell Clark,	No. 23,111.

The record, p. 4, shows that the book No. 23,109, in the name of Mrs. Nellie C. Platt, represents the total sum of $1,757.47.

Each of the other books represents an equal amount.

Record, top p. 5.

The books of the bank show that the amount due on each of said books, Jan. 15, 1889, was $1,792.61.

Record, pp. 36 and 37.

Motions to Dismiss for Want of Jurisdiction.

Our motion in the case of Ellen C. Platt is as follows:

"Now comes the defendant, Ellen C. Platt, and moves the Court to dismiss the bill herein, as against this defendant, for want of jurisdiction, as apparent from the bill, because it there appears that the matter in dispute between the appellant and this defendant does not exceed the sum or value of Five Thousand dollars, exclusive of costs, but is only $1,792.61.

Second. If this Court has jurisdiction to entertain this appeal as to this defendant, then she moves that the judgment and decree of the Circuit Court be affirmed as to her, because it is manifest that said appeal was taken for delay only, and the question on which the jurisdiction depends is so frivolous as not to need further argument."

We have filed similar motions for each of the other defendants.

I.

The claim is against each defendant severally.

In treating this question, we desire to discuss the case as applicable to each of the defendants separately from

the others, and first, we will discuss it as applicable to Ellen C. Platt.

The controversy between the complainant and the defendant, Mrs. Platt, is as follows:

The complainant says that Mrs. Platt has in her possession a book, No. 23,109, standing in the defendant's, Mrs. Platt's, name, representing $1,792.61, and that said bank book, and the money evidenced thereby, belong to the estate of said Irene Clark.

There is no claim, made by the complainant, that either Emma J. Clark or Mary Bell Clark have possession of said book, or the money, or any part thereof, or have or claim to have any interest in it, and the complainant asks no judgment or decree of the Court against either Emma J. or Mary Bell Clark, as to this book or the money evidenced by it, or any part thereof, but the prayer of the bill is that Mrs. Platt turn over the book now in her possession to the executor.

Record, p. 9.

Mrs. Platt's answer is, that the book, and the money represented thereby, is her absolute property and her own money, and that no one else has any right to it.

The issue is clear and distinct between the complainant and this defendant, to wit: The estate owns this $1,792.61, and you, Mrs. Platt, and you alone, must deliver it up. The defendant says it is my own individual property, no

one else has any right or interest in it, and I refuse to deliver it up.

Within the issues formed in this case, it were competent for the Circuit Court to have found and decreed, that the book No. 23,109, claimed by Mrs. Platt, was the property of the estate, and that she should deliver it up, and that it be inventoried, and also to have decided and decreed that Emma J. Clark and Mary Bell Clark were the owners of the books and money standing in their names, respectively, and, as to them, to have dismissed the bill.

It is perfectly clear that such a judgment against Mrs. Platt would not affect either Emma J. or Mary Bell Clark, or the books and money standing in their names, and they could have had no cause of complaint and could not have appealed from the judgment against Mrs. Platt.

The judgment against Mrs. Platt, being upon a controversy between the parties for less than $5,000.00, exclusive of costs, she has no right of appeal.

Stewart *vs.* Dunham, 115 U. S., 61.

If the defendant has no right of appeal, the same rule applies to the plaintiff, and she cannot appeal.

Paving Co. *vs.* Mulford, 100 U. S., 147.

It seems clear to us that so far as Mrs. Platt is concerned, the amount in controversy, being about $1,792.61,

is not sufficient to give this Court jurisdiction, and the appeal must be dismissed as to her.

II.

The facts above stated, and the argument made, concerning Mrs. Platt, apply with equal force to each of the other defendants, Emma J. Clark and Mary Bell Clark, all three standing upon precisely the same ground.

Therefore, the appeal ought to be dismissed as to each.

III.

The amount in controversy against all of the defendants cannot be added together to give this Court jurisdiction.

It appears from the record, pp. 36 and 37, that the amount in controversy with Ellen C. Platt is $1,792.61, and the same in the case of each of the two other defendants, Emma J. and Mary Bell Clark. If we add the amounts together we have $5,377.83, *which sum* is sufficient to give this court jurisdiction, so that the question turns upon the right of the complainant to add the different sums together to obtain jurisdiction.

In Gibson *vs.* Shufeldt, 122 U. S., 27, where all the leading cases upon this subject are cited and commented upon, this court, on p. 30, lays down the rule as follows:

"Generally speaking, however, it may be said, that the joinder in one suit of several plaintiffs or defendants, who might have sued or been sued in separate actions, does not enlarge the appellate jurisdiction; that when property or money is claimed by several persons suing together, the test is whether they claim it under one common right, the adverse party having no interest in its apportionment or distribution among them, or claim it under separate and distinct rights, each of which is contested by the adverse party; that when two persons are sued, or two parcels of property are sought to be recovered or charged, by one person in one suit, the test is whether the defendants' alleged liability to the plaintiff, or claim to the property, is joint or several; and that so far as affected by any such joinder, the right of appeal is mutual, because the matter in dispute between the parties is that which is asserted on the one side and denied on the other."

To apply this rule to the case at bar, the plaintiff asserts that the defendant, Ellen C. Platt, has in her possession a certain bank book, representing the sum of $1,792.61, and asks for a judgment that she turn the book and the money over to the estate.

The same claim is made as to Emma J. Clark and as to Mary Bell Clark.

Each of said defendants answers these claims, by averring that each book, and the money represented thereby, is, respectively, their individual property, and that the estate has no interest therein.

There is a class of cases, of which Shields *vs.* Thomas, 17 How., p. 3, is perhaps the earliest, where several plaintiffs claimed to be jointly interested in certain money

or property, which, taken entire, is of sufficient value to give jurisdiction.

The ruling is that this court has jurisdiction provided the several plaintiffs, or defendants, as the case may be, claim under one title, and have a common and undivided interest in the entire sum. Chief Justice Taney says, p. 5, "They had a common and undivided interest in the claim, and it was perfectly immaterial to the appellant how it was to be shared among them. He had no controversy with either of them on that point."

If, in the case at bar, the complainants were jointly Mrs. Platt and Emma J. and Mary Bell Clark, as well as Martha A. Miller, all claiming as devisees under the will of Mrs. Irene Clark, and there was one defendant claiming the entire sum of money, as a gift from Irene Clark, then, an appeal to this court could be sustained, so far as the jurisdiction is concerned.

In that case the several plaintiffs would have a common and undivided interest in the entire sum, although each plaintiff would be entitled only to a proportionate amount of the whole, as between themselves, when the estate is distributed.

But the case at bar is not such a case, the controversy in our case between the complainant and each of the three defendants, Ellen C. Platt, Emma J. Clark and Mary Bell Clark, is separate and distinct, and the decree prayed for is for a separate and distinct relief as against each, respectively and severally.

IV.

The appeal should be dismissed as to the executor.

We have, previously in our brief, discussed the case as regards all the defendants except Albertus N. Clark, the executor. We now submit that the appeal should be dismissed as to him.

The executor was brought into the case in his representative capacity. The complainant claimed no judgment against him, except as incidental to a judgment against the other defendants. The complainant does not claim that these bank books, or the money, should be turned over to her, but that they should be turned over to the executor. The executor is the real plaintiff in the suit. He was made a party defendant, because he refused to be a party plaintiff; so that, in considering this question of jurisdiction, the executor may be regarded as a party co-plaintiff with Mrs. Miller. Then we have the case in its real form.

Mrs. Miller, the active plaintiff, the executor, a nominal plaintiff;

Ellen C. Platt, Emma J. Clark and Mary Bell Clark, the defendants.

We submit that the argument made under the I, II and III points of our brief shows that the appeal should be dismissed as to all the parties.

Again the controversy between the plaintiff and the defendant, Albertus N. Clark, the executor, if indeed there was any, was of a secondary nature. Her claim against him is based entirely upon her right against each of the other defendants.

If the plaintiff succeeds in obtaining a judgment against Mrs. Platt, in reference to her book and money, then she asks a decree that the executor take into his possession said book and money, and inventory it as assets of the estate; the same is true as to the other two defendants.

The plaintiff does not ask for, or claim, that a judgment should be rendered, or a decree passed, against the executor that he should inventory the entire sum of $4,500, and accrued interest, unless she first obtains a decree that the title to the same is in the estate; and that question is divided into three separate and distinct claims, and for three separate and distinct sums, and against three separate and distinct parties.

As the plaintiff's claim against the executor, if she has any, is based upon her three separate suits or controversies, they cannot be joined for the purpose of conferring jurisdiction upon this Court as against the executor.

Therefore we submit that the case should be dismissed as against him.

V.

But if this Court should be of opinion that the case should be dismissed as to the defendants, Ellen C. Platt, Emma J.

Clark and Mary Bell Clark, but should not be dismissed as to the Executor, then we ask that the judgment of the Circuit Court be affirmed as to him, because it is manifest that the appeal was taken for delay only, and that the question, on which the jurisdiction depends, is so frivolous as not to need further argument.

For if this Court should dismiss this appeal as to Ellen C. Platt, Emma J. Clark and Mary Bell Clark, as we think it must do, then the judgment and decree of the Circuit Court must stand as to them, and the result is that we have a valid judgment and decree of the Circuit Court, binding upon all the parties, that this $4,500, and accrued interest, is not the property of the estate of Irene Clark, and no decree can ever be passed on this appeal, against the executor, to inventory that property, but the final decree of this Court must be in his favor, that the bill be dismissed.

Therefore we submit that, if the appeal is dismissed as to other three defendants, and not as to the executor, the judgment and decree of the Circuit Court should be affirmed as to him.

VI.

If this Court should be of opinion that it had jurisdiction to hear this appeal, as to all the defendants, then the judgment and decree of the Circuit Court should be affirmed, as to all of them, for it is manifest that the appeal was taken for delay

only, and that the question, on which the jurisdiction depends, is so frivolous as not to need further argument.

STATEMENT OF THE FACTS IN THE CASE.

In October, 1884, Irene Clark, of Milford, Connecticut, requested the defendant Ellen C. Platt, her grand-niece, to go with her to New Haven, and, on October 15, 1884, they went to New Haven together, and while there called at the Connecticut Savings Bank, where Mrs. Clark had on deposit upwards of $5,000.

Test. of Georgianna Hubbell, Record p. 47, print.
Test. of Mrs. Platt, Record p. 54, print.

Mrs. Clark presented her book to the clerk in the bank to be written up, and requested that $1,500 be transferred from her book to each of three persons whom she named. The persons so named by her were her grandneices, Ellen C. Platt, Emma J. Clark and Mary Bell Clark, the defendants in this case.

(White's test. Ans. to Int. 7 and 8. Record p. 21, print. Ans. to X-Int. 49. Record p. 25, print.)

Mrs. Irene Clark further stated to the clerk that she desired to give each of said persons $1,500, and that she desired to have the bank books so fixed and the entries

so made, *that the money should belong to the persons named*, but that they could not draw it, or spend it during her life. (White's test. Ans. to X-Int. 50, 51, 52, 53 and 54. Record, pp. 25 and 26, print.)

In pursuance of these instructions, Mr. White, the clerk, made the entries upon the books, which are in evidence.

It appears from the books of the bank in evidence, the ledger and cash books, (Record, pp. 35, 36, 37 print), that on October 15, 1884, Mrs. Irene Clark was charged with $4,500, and each of the defendants are credited in their own names, respectively, absolutely and unconditionally, with $1,500.

Entries were also made upon the pass books issued in the name of each of the defendants, as follows:

"Only Mrs. Irene Clark has power to draw,"

and upon the signature book, in each case,

"Mrs. Irene Clark, trustee,"

and in the case of Ellen C. Platt, the words,

"Mrs. C. only to draw,"

and in the case of other two,

"Only Mrs. Irene Clark to draw."

Record, pp. 4 and 5, print.

Mrs. Platt, being at the bank at the time, signed the signature book, and blank strips were handed to Mrs. Irene Clark for her to obtain the signatures of the others and return the same to the bank.

Immediately after her return to Milford, and on the very same day, she showed the bank books to Mr. George E. Platt, husband of said Ellen C. Platt, and told him that she had given the girls $1,500 each, and that they should share in the will as if she had not given them a penny.

Platt's test. Ans. to Int. 9, 10, 11 and 12. Record, pp. 48, 49, print.

She gave Mr. Platt the two blank signature strips, and said that they "had got to be signed: that Nellie had signed at the bank and there would be no slip for her to sign."

Platt's test. Ans. to Int. 14, Record, p. 49, print.

The donees were immediately notified of the gift, and signed the strips, and they were afterwards returned to the bank and pasted in the signature book.

Test of Ellen C. Platt, Emma J. Clark, and Mary Bell Clark. Record, pp. 54, 55, 56 and 57, print.

Subsequently, on different occasions, Mrs. Irene Clark declared to a number of her personal friends and neighbors that she had given this money to the defendants. (Defendant's test. Record, pp. 39-50, print.) Mrs. Clark

kept the pass books in her possession for a time, and then she handed them to Mrs. Platt, who kept them until shortly before Mrs. Clark's death, when, to keep peace with her husband, Mrs. Clark sent for them, and they were returned to her by Mr. Platt, she remarking to him "if anything should happen to me, you must be right on hand to get these books and papers as soon as you can."

Platt's test. Ans. to Int. 19, 20, 21, 22, 23, 24, 25 and 26. Record, pp. 50 and 51, print.

VII.

Assignments of Error.

The appellant in her appeal makes eight assignments of error, (Record p. 6), but in reality there are only three.

(1.) That there were no valid gifts.

(2.) That if the gifts were valid, they were in ademption or satisfaction of the residuary bequests to the defendants under the will.

(3.) Objections to Evidence.

We claim the assignments of errror are without merit, and are too frivolous to need argument.

(1.) *As to the appellant's claim that there were no valid gifts.*

Upon the statement of the case as above given, or upon the reading of the evidence, it must be apparent that the moment that this money was transferred to the defendants, and notice given them, and they accepted it, the title to it vested absolutely in the defendants, respectively. The only restriction put upon these gifts was that the money could not be drawn without the consent of the trustee, Irene Clark, during her life. Those were her instructions to the clerk, and he made the entries in the pass books and signature book in pursuance of those instructions. The words he wrote,—"Mrs. Irene Clark, Trustee," and "Only Mrs. Irene Clark has power to draw"—are to be construed in the light of her instructions, namely, that the beneficiaries could not draw or spend it during her life without her consent.

The fact that the pass books remained in her possession for a time, does not affect the gift. She was the trustee, and, as such, was entitled to their possession.

There is no evidence that she held the books because she owned the money. Her entire action in the matter shows that she held them as trustee, which was proper.

Miner *vs.* Rogers, 40 Conn., 520.
Boone *vs.* Citizens Savings Bank, 84 N. Y., 83.

There was, beyond all question, a valid and completed gift in each case, and the estate of Mrs. Clark has no interest in the matter.

Camp's Appeal, 36 Conn., 88.
Miner *vs.* Rogers, *supra.*
Kerigan *vs.* Rautigan, 43 Conn., 17,
Gerrish *vs.* New Bedford, 128 Mass., 159.
Martin *vs.* Funk, 75 N. Y., 134.
Blasdel *vs.* Lock, 52 N. H., 238.
Howard *vs.* Savings Bank, 40 Vt., 597.
Ray *vs.* Simmons, 11 R. I., 266.

Basket *vs.* Hassell, 107 U. S., 602, and that class of cases, are cases where there was no completed gift, but are testimentary dispositions to take effect only in case of death, and that is made a condition precedent. Such cases differ entirely from the case at bar, where there was a gift which took effect at once, and was not made dependent upon death.

The Court, in Basket *vs.* Hassell, on p. 611, cites Camp's Appeal, 36 Conn., 88, with approval.

United States Courts follow State decisions, which govern descent, transfer and sale of property, in cases concerning those matters.

Pritchard *vs.* Norton, 106 U. S., 124.
Bucher *vs.* Cheshire R. R. Co., 125 U. S., 583.

(2.) *As to the appellant's claim that in case these transfers were gifts, they were in partial ademption or satisfaction of the residuary bequests to the defendants.*

This claim is manifestly absurd, for even if it were true it would not entitle the appellant to a decree. No such claim can be made to this Court. The pleadings do not raise it. Nothing in the complaint, or in the answer, or replication, forms any such issue. All she asks is that these books be turned over to the executor, and clearly the executor is not entitled to them on any theory. If they are to be taken in partial ademption or satisfaction, that can only affect the amount coming to the defendants when the estate is distributed. The very foundation of a claim of ademption or satisfaction is that there has been a valid gift. The claim of ademption or satisfaction is inconsistent with, and defeats, the relief prayed for by this appellant.

Record, p. 9.

In Cowles *vs.* Cowles, 56 Conn., 240, Judge Pardee discusses the law relative to the ademption of legacies, and on pp. 243 and 244 says:

"If therefore a testator, having made his will containing a general bequest to a child or stranger, makes an advance, or does other acts, which can be shown by express proof to have been intended by the testator as a satisfaction, or discharge of, or a substitute for, the legacy given, it shall be deemed in law, to be an ademption of the legacy."

This is the law in Connecticut.

But there can in no case be any ademption or satisfaction, when it is shown that the testatrix intended that there should be none, but that the donees should still share equally under her will.

Mrs. Irene Clark said so expressly.

Platt test. Ans. to Int. 12. Record p. 49, print.

(3.) *As to the objections to evidence.*

These objections to evidence are also frivolous, as it seems to us.

(*a.*) The first, which is numbered 4 of the assignments of error, (Record, p. 6), is as follows:

"And in admitting evidence as to declarations and acts of the testatrix before or after the alleged acceptance of the alleged gifts to show her purpose in transferring the deposits, particularly that from Amanda Franklin and Alice E. Sparks and J. J. Minor and M. W. Cowan as to conversations one or two years after the transfers."

The implication or suggestion, that these conversations took place one or two years after the transfers, is not true. The conversation with Mr. White, at the bank, took place at the very time of the transfers, and that with Mr. Platt, on the very day that the transfers were made.

(White's test. Ans. to Int. 6, Record, p. 21, print: Platt's test. Ans. to Int. 11, Record, p. 48, print.)

The conversations with the other witnesses show that they took place shortly after the transfers, and are clearly admissible to show the purpose and intention of Mrs. Irene Clark in making the transfers, that being the vital point in the case. Such testimony is always admitted.

Scott *vs.* Berkshire Sav. Bank, 140 Mass., 157.

These statements are also against the interest of Mrs. Clark, and tend to prove the gift, and therefore the evidence of them is admissible.

Smith *vs.* Martin, 17 Conn., 401.
Burton *vs.* Bank, 52 Conn., 402.

(*b.*) The next assignment of error is numbered 7 of the appellant's assignments of error, and is as follows:

"And in admitting the leading cross-question 53, and answer in the testimony of W. R. White."

The question was, "Did she (Mrs. Irene Clark) tell you she desired to give each of these three persons named, 1,500?"

X-Int. 53, Record, p. 25, print.

The objection of record is that "Complainant's solicitor objects to the question, as the transaction was reduced to writing, as the witness has already stated, and as leading."

It hardly seems necessary to argue this objection.

The important matter here is, what Mrs. Irene Clark said and did at the time, as showing her intention.

What the clerk wrote down is only important in so far as it carries out Mrs. Clark's intention.

What her instructions to the clerk were, are of the very highest importance, and all that she said at the time about this matter was admissible. The complainant had drawn out of the witness a part of the conversation, and we were entitled to the whole of it.

In regard to the objection that the question is leading, it is a sufficient answer to say that it was asked in cross-examination of the complainant's witness.

(*c.*) The other, and last, objections to evidence are numbered 8 in the assignments of error, and are to the testimony of Ellen C. Platt, Emma J. Clark and Mary Bell Clark, the three donees, to the effect that they were notified of the gifts and had signed the signature strips.

Ellen C. Platt testified (Ans. to Int. 8. Record, p. 55, print.)

"I told her" (Mary Bell Clark) "I had been to New Haven with Mrs. Irene Clark and she had given each of us girls a bank book, $1,500 each, and I had signed my name on the big book at the bank the day she gave them. She wanted to see them, to have them go and sign their names. She had got two slips of paper for them to sign their names to take to the bank."

Mary Bell Clark testified (Ans. to Int. 2. Record, p. 56, print.)

"I saw Nellie Platt at church in Milford. It was in October, 1884, I think. She said my aunt Irene had been to New Haven and had given each of us three girls a bank book of $1,500, and wanted Mrs. Albertus Clark," (Emma J. Clark,) "and myself, to come down to her house to sign some papers that were to be returned to the bank."

Int. 3, same page, is;

"I will ask you whether you told Mrs. Albertus Clark what Mrs. Platt had said to you.

Ans. "I did."

Emma J. Clark testified in Answer to Int. 2, (Record, p. 57, print).

"State whether Mrs. Mary Bell Clark said anything to you about these bank books; and, if so, where it was, and what she said."

Ans. "She did, at my own house. She said that Mrs. Nellie Platt told her that aunt Irene Clark had given each of us a bank book of $1,500, and wanted us to come down to her house and get some slips on which to sign our names to be returned to the bank."

All this evidence is simply as to the fact that they had *knowledge* of this transaction, and is not as to any transaction with, or statement by, the testatrix, and not within § 858, Rev. Stat. U. S. We prove by independent witnesses that Mrs. Clark directed that notice be given the donees, and this evidence is simply that they received such notice. No other person could possibly testify to this fact, and such testimony is always admitted.

1 Greenl, Evid., §§ 349, 350.
Taylor *vs.* Riggs, 1 Pet., 597.
United States *vs.* Murphy, 16 Pet., 210.

In United States *vs.* Clark, 96 U. S., 42, the Court says that this statute only restores the common law.

In conclusion we beg to refer the Court to the opinion of Judge Shipman, on p. 58, 59 and 60 of the Record, and reported also in 40 Fed. Rep., p. 15, which we think is a fair statement of the law and the facts of this case.

We submit,

First.—That the appeal should be dismissed for want of jurisdiction.

Second.—That, although this Court has jurisdiction, the decree of the Circuit Court should be affirmed under rule 6.

All of which is respectfully submitted,

WILLIAM B. STODDARD,
Counsel for Appellees.